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a fishing zone delimitation of the alaskan coast: introducing fishery baselines

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A Fishing Zone Delimitation of the Alaskan Coast: Introducing Fishery Baselines

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PREFACE

The Sea Grant Colleges Program was created in 1966 to stimulate research, instruction, and extension of knowledge of marine resources of the United States. In 1969 the Sea Grant Program was established at the University of Miami.

The outstanding success of the Land Grant Colleges Program, which in 100 years has brought the United States to its current superior position in agriculture production, helped initiate the Sea Grant concept. This concept has three primary objectives: to promote excellence in education and training, research, and information services in sea related university activities including science, law, social science, engineering and business faculties. The successful accomplishment of these objectives, it is believed, will result in practical contributions to marine oriented industries and government and will, in addition, protect and preserve the environment for the benefit of all.

With these objectives, this series of Sea Grant Technical Bulletins is intended to convey useful studies quickly to the marine communities interested in resource development without awaiting more formal publication.

While the responsibility for administration of the Sea Grant Program rests with the National Oceanic and Atmospheric Administration of the Department of Commerce, the responsibility for financing the Program is shared by federal, industrial and University contributions. This study, A Fishing Zone Delimitation of the Alaskan Coast: Introducing Fishery Baselines, is published as a part of the Sea Grant Program and was made possible by Sea Grant support for the Ocean Law Program.

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CHAPTER I

INTRODUCTION

At a time in history when the world looks more and more to fish as a source of food for its growing population, it seems logical that nations with great fishing potential off their coasts would support their fishery industry and employ the most efficient conservation and management programs. However, in the United States the Federal Government provides only limited economic assistance to its fishermen.[1] Moreover, in certain geographic areas, for instance the Alaskan coast, the limited jurisdiction renders conservation and management methods inefficient due to multi-nation exploitation. As a result, the fishermen of the United States as well as the Nation's economy are being detrimentally affected by the heavy flow of imported foreign seafood products, gear conflicts and other competition from massive foreign fleets resulting in the depletion of precious fishery resources due to over-exploitation and destructive fishing practices.[2]

The limited support by the Federal Government to its fishermen seems contrary to the fact that the United States is a fish-eating nation. The United States comprises six percent of the world population but consumes ten percent of the total world

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[1]C. P. Idyll, The Sea Against Hunger (New York: Thomas Y. Crowell Company, 1970), p. 124.

[2]Legislature of the State of Alaska, House, Proposed Joint Resolution No. 3, Introduced 1/13/71, 7th Legislature, 1st Sess., p. 1.

fish catch.[3] Furthermore, it seems logical that the Federal Government should support its fishermen to a greater extent in view of the fact that our coastal waters are endowed with a vast fishery potential.

One area in particular where the fisheries are plentiful is off the Alaskan coast. Other nations, such as Russia and Japan, are heavily exploiting these waters. It is essential that the Federal Government establish a system to control these coastal fisheries as extensively as possible for the protection of the Alaskan fishermen in particular and the United States as a whole.

One way to improve this situation is through the establishment of a more extensive exclusive fishing zone by the incorporation of fishery baselines. The purpose of this thesis is to propose a promulgation of fishery baselines[4] around the coast of Alaska in order that the Federal Government and the State of Alaska will be able to exercise exclusive jurisdiction for fishery purposes by extending the area beyond the traditional twelve mile zone presently determined by the arc of circles method. This concept will enable the United States to more efficiently protect and manage an important resource off its coast. Other reasons for establishing a fishery baseline system will be further discussed in a subsequent chapter.

The use of the fishery baseline system in Alaska has never been formally proposed to the Federal Government, whereas use of the straight baseline system for Alaska has been considered.

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[3]Idyll, The Sea Against Hunger, p. 124.

[4]By drawing imaginary water crossing lines, identical to straight baselines, from headland to headland, around the outermost islands.

In 1966 the State of Alaska made its first attempt to encourage the Federal Government to implement the straight baseline method for the Alaskan coast in order to better conserve the natural fishery resources off its coast[5] and to protect the Alaskan fishing industry from the encroachments of foreign fishing vessels which are heavily exploiting stocks and interferring with fishing gear of our local fishermen.[6]

The following year Alaska's Governor Walter J. Hickel met in Washington with the representatives from the Department of State, the Department of the Interior and the Department of the Defense in an effort to persuade the Federal Government to incorporate the straight baseline method for the Alaskan coast. The State of Alaska recommended this method as an aid in solving the problem of conservation of the fish stocks off its coast by the conversion of large areas that were considered high seas into an exclusive fishing zone. In order to reinforce its claim to a straight baseline method, the State of Alaska demonstrated the physical similarities between Alaska's coastline and the Norwegian coastline where the straight baseline system is presently employed. The State further related

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[5]Robert L. Hartig, "Applying the Straight Baseline Concept in Measuring Alaska's Coastal Boundary," Paper presented before the Alaska Surveying and Mapping Convention held in Anchorage, Alaska, Feb. 4, 1971, p. 6.

[6]Legislature of the State of Alaska, Proposed Joint Resolution No. 3;

Letter from William A. Egan, Governor of Alaska to Ambassador Donald McKernan (copy of letter personally forwarded by Harold Z. Hansen, Director, International Fisheries, State of Alaska).

Personal letter from Harold Z. Hansen, Director, International Fisheries, March 5, 1971: "Japan refuses to recognize U.S.Public Law defining the contiguous zone (nine miles) to the territorial zone (three miles). They maintain that the three mile limit only is valid."

that Alaska has a great economical dependence on its coastal fisheries.[7]

The Department of State recognized the similarity of the southeast coast of Alaska with that of the Norwegian coast and acknowledged the need to apply the straight baseline method for the coast of Alaska when it stated in 1959 in a Department of State Bulletin as follows:

> "Along the coast of the continental United States--again excluding Alaska--no situation appears to exist which could be construed as requiring the use of straight baselines."8

However, in reply to Governor Hickel, the Department of State denied his request on the grounds that United States national interest dictates the maintenance of the widest possible freedom of the seas for maritime and naval purposes. The State Department felt that the adoption of the straight baseline method by the United States would encourage other nations to also increase their sovereignty in areas which would otherwise be considered high seas.[9]

Another reason for the Federal Government's opposition to the straight baseline system is understood when considering the straight baseline method in conjunction with the Submerged Lands Act[10] and the Outer Continental Shelf Lands Act.[11] These

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[7]Hartig, "Applying the Straight Baseline Concept," p. 6.

[8]Getzel Pearcy, "Measurement of the U.S. Territorial Sea," Bulletin of the Dept. of State, No. ND1044 (Washington, D.C.: Government Printing Office, June 29, 1959), pp. 963, 967, 971.

[9]Hartig, "Applying the Straight Baseline Concept," p. 7.

[10]Public Law 31, 83rd Congress, 1st Sess, 67 Stat 29(1953).

[11]Public Law 212, 83rd Cong., 1st Sess, 67 Stat 462(1953).

Acts declare that the United States has jurisdiction over the natural resources of the seabed and continental shelf seaward of state boundaries. Consequently, if the straight baseline method was applied, it would not be incorporated to the advantage of the Federal Government because the additional territorial waters which would be acquired by the State of Alaska would be at the expense of the Federal Government. That is, all the extra portions of the continental shelf that the State would receive by the straight baseline method would be in proportion to the amount of continental natural resources which the Federal Government would be deprived of exploiting.[12]

The disadvantages that would exist if the straight baseline system was utilized for the coast of Alaska would be alleviated if a fishery baseline system was employed instead. Supporting reasons for utilization of fishery baselines rather than straight baselines will be discussed in the concluding chapter of this report.

It is necessary that the Federal Government rather than the State of Alaska draw these fishery baselines as stated in the case United States v. California.[13] This case held that the United States may extend her boundaries by means of a straight baseline system if she chooses, but that "California may not use such baselines to extend our international boundaries beyond their traditional international limits against the express opposition of the United States. An extension of

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[12]Hartig, "Applying the Straight Baseline Concept," p. 9.

[13]United States v. California, 381 US 139.

a state's sovereignty to an international area by claiming it as inland waters would necessarily also extend national sovereignty, and unless the Federal Government's responsibility for questions of external sovereignty is hollow, it must have the power to prevent states from so enlarging themselves."[14] The Court concluded the matter by holding that the "choice under the Convention to use the straight baseline method for determining inland waters claimed against other nations is one that rests with the Federal Government."[15]

While fishery baselines will not necessarily make the waters enclosed internal waters, they will extend our national sovereignty as far as exclusive fishing is concerned, which would be against the holding of the Supreme Court in the United States v. California case. Hence, it is up to the Federal Government to permit these lines to be drawn.

If the fishery baseline system was approved for the State of Alaska, it would also be necessary for the Federal Government to amend Section 2 of the Federal Extraterritorial Waters Act, which reads:

> "The fisheries zone has its inner boundary the outer limits of the territorial sea and as its seaward boundary a line drawn so that each point on the line is nine nautical miles from the nearest point in the inner boundary."16

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[14] Ibid.

[15] Ibid., pp 167-168.
For a further discussion, see Elizer Erelir, "Territorial Seas," Tulane Law Review, Vol. 41, April 1967, pp. 555-578.

[16] 80 Stat 908, Public Law 98, 658.

This Act should be amended to read that the fishery zone will extend twelve miles from the fishery baseline instead of from the outer limits of the territorial sea. This is necessitated by the fact that fisheries jurisdiction in this area will be independent of territorial jurisdiction.

This paper is intended to aid the surveyor in choosing particular baselines but is not meant to suggest any particular base points. In other words, all illustrations are provided for explanatory purposes only and not as inferences of the exact lines that should be drawn. The actual drawing of baselines should be done by an expert in that field.[17]

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[17]Marjorie M. Whiteman, Digest of International Law, Vol. IV, Department of State Publication 7825 (Washington, D.C.: Government Printing Office, 1965), p. 138.

CHAPTER II

COMPARISON OF PROPOSED SYSTEM WITH CANADIAN CLOSING LINES AND STRAIGHT BASELINES

A. Fishery Baselines and Straight Baselines

Fishery baselines are identical to straight baselines in that they are water baselines drawn from headland to headland and around the outermost fringes of islands.[18] See Chart 2.1. Similarly, the fishery baselines will have to follow much of the criteria covering straight baselines as set forth in Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone.[19] These criteria are outlined in Chapter IV.

B. Fishery Baselines and Fishery Closing Lines

The proposed fishery baselines are similar to the fishery closing lines which are presently being pioneered by Canada and utilized to close Queen Charlotte Sound and Dixon Entrance.[20] See Chart 2.2. The proposed fishery baselines

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[18]For a more detailed description of straight baselines, see Whiteman, Digest of International Law, Vol. IV, pp. 139-140.

[19]Convention on the Territorial Sea and the Contiguous Zone, adopted by the United Nations Conference on the Law of the Sea, April 29, 1958 (U.N. Doc. A/CONF. 13/L.52); hereafter cited as Article 4 of the Convention on the Territorial Sea and the Contiguous Zone; this cite covers all subsequent general references to Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone.

[20]Department of Fisheries and Forestry of Canada, "Fishing Closing Lines Announced by Fisheries and Forest Minister Jack Davis," News Release (Ottawa, December 18, 1970), p. 5.

It should be noted that the United States has opposed the Canadian closing lines.

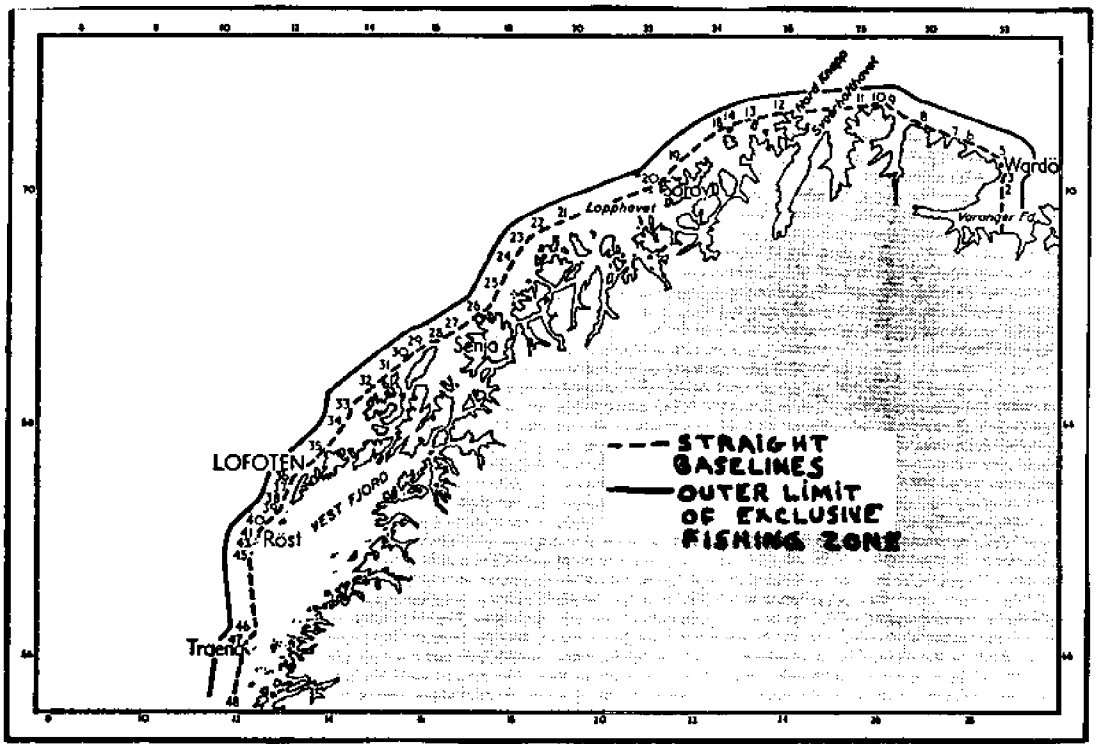

CHART 2.1. The broken lines in the chart represent straight baselines along the Norwegian coast. These lines would be identical to fishery baselines. The solid line in the chart represents Norway's boundaries. Under the fishery baseline system, the solid line would be drawn twelve miles from the baseline and represent the outer limit of the exclusive fishery zone.

Source: C.H. Waldock, "The Anglo-Norwegian Fisheries Case," British Yearbook of International Law, XXVIII (1951), p. 115.

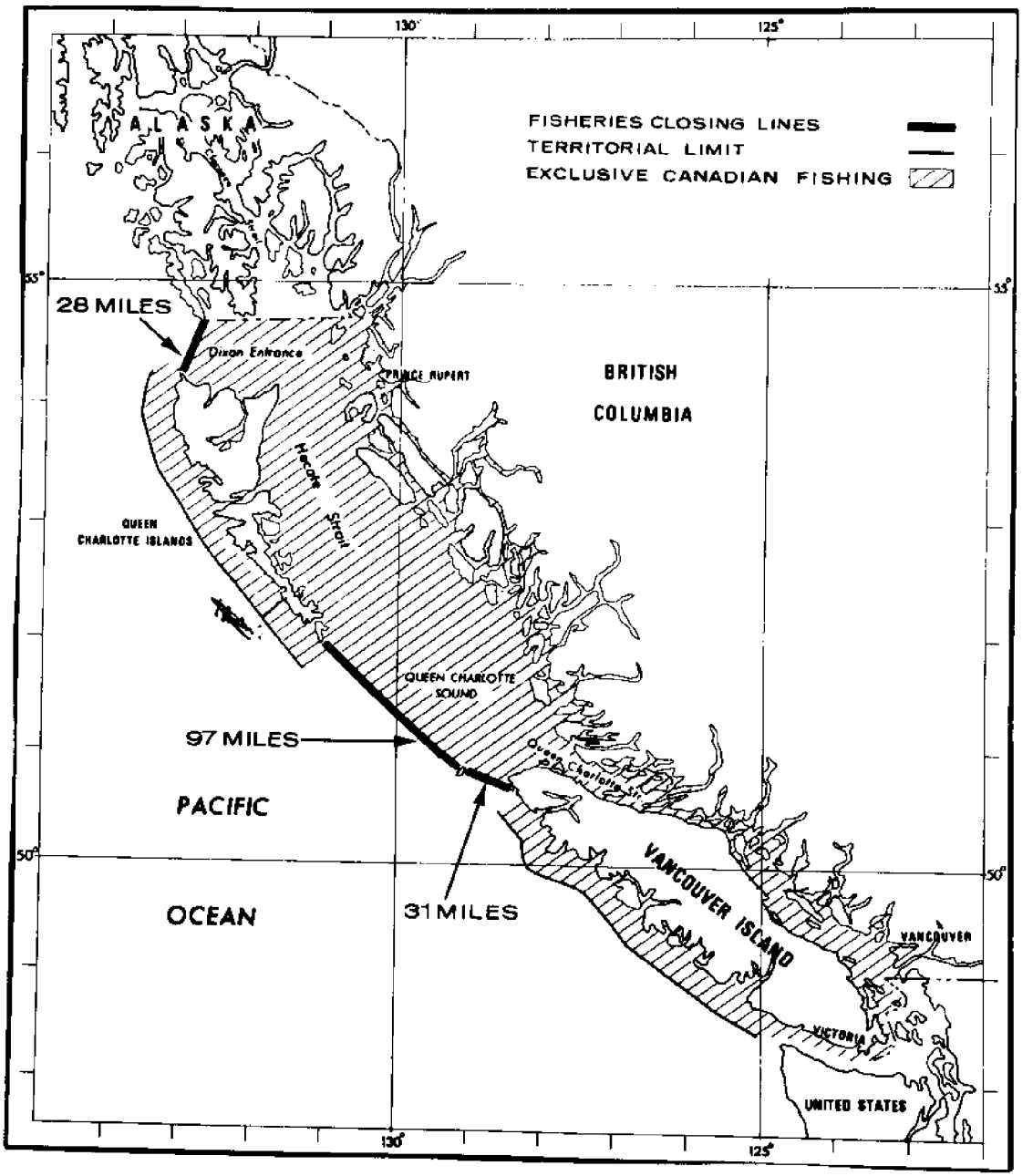

CHART 2.2. Fishery closing lines along a portion of the coast of Canada.

Source: Department of Fisheries and Forestry of Canada, "Fishing Closing Lines Announced by Fisheries and Forest Minister Jack Davis," News Release (Ottawa, December 18, 1970), p. 5.

and the fishery closing lines differ from the straight baseline method because they are not lines from which the breadth of the territorial sea is measured and because the waters landward from the lines are not necessarily considered inland waters. Additionally, both the proposed Alaskan fishery baselines and the Canadian fishery closing lines are drawn for fishery jurisdiction purposes only. In other words, these lines allow the United States and Canada respectively to separate fisheries jurisdiction from the complete sovereignty which states enjoy in their territorial and internal waters.[21] Also, the two methods are similar in that they are without prejudice to any future claims of full sovereignty over the areas concerned.[22] According to Canadian Fisheries and Forest Minister Jack Davis, if a nation establishes an exclusive fishing zone, it will not later lose its right to convert this method to a straight baseline system.[23] This concept should also be applied to the fishery baselines proposed in this paper.

The proposed fishery baselines differ from the Canadian fishery closing lines because they are only a tool from which the extent of the fisheries zone is measured, whereas the closing lines represent the actual limit of Canada's fishery zone. Compare Charts 2.1 and 2.2.

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[21] Ibid.

[22] Ibid.

[23] Ibid.

CHAPTER III

FISHERY BASELINES AND INTERNATIONAL LAW

A. International Acceptability of the Fishery Baseline System

Fishery baselines would be considered internationally acceptable for two reasons. First and foremost, it is reasonable that a nation can make a less extensive claim than the maximum that is permissible in the international arena. Secondly, as will be further discussed in a subsequent Chapter, establishment of the straight baseline method (which is the maximum permissible claim) was for an exclusive fishery zone as set forth by the conferees at the 1958 Convention on the Territorial Sea and the Contiguous Zone, and by the conferees who formulated Article 5 of the 1956 International Law Commission Report,[24] and by the Norwegian government in establishing her straight baseline system.

Since the fishery baseline system is identical to the straight baseline method, except that it only delimits an exclusive fishing zone and not territorial and inland waters, the fishery baseline method would then be a lesser claim in this area and, therefore, internationally allowable. In other words, fishery baselines should be internationally acceptable on the grounds that it is justifiable for a nation to claim

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[24]United Nations, General Assembly, Report on the International Law Commission, Official Records, 11th Sess., Supp. No. 9, A/3159 (Lake Success) 1956; this cite covers all subsequent general references to the 1956 International Law Commission Report.

less jurisdiction than the maximum which it has a right to claim. For example, hypothetically no state would protest a decision by the United States government to relinquish our rights to the waters off our coast.

B. Duties and Obligations in the Exclusive Fishing Zone

A question arises whether a nation that makes a less extensive claim than it can legitimately claim is still burdened with the legal duties and obligations of the area it chose not to claim. Since utilization of the straight baseline method is a permissive claim,[25] a state is not burdened with the duties and obligations that flow from unclaimed areas of the high seas if the state does not wish to incorporate the system. Fishery baselines are a portion of a larger permissive claim; therefore, the United States will not owe territorial and inland obligations and duties in areas of the high seas that are part of the exclusive fishing zone.

C. Summary

In order to strengthen Alaska's claim to utilize the fishery baseline method, which is the lesser claim, it would be beneficial to prove that Alaska is qualified to use the straight baseline system, which is the maximum claim internationally recognized.

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[25] U.S., Congress, Senate, Conventions on the Law of the Sea, Hearings, before the Committee on Foreign Relations, Senate, 86th Cong., 20th Sess., January 29, 1960, p. 8284.

CHAPTER IV

STRAIGHT BASELINE SYSTEM AND INTERNATIONAL LAW

A preliminary to qualifying Alaska's coastline for use of the straight baseline method is a review of Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone which sets forth qualifications for use of the method. It is also necessary to examine Article 5 of the same Convention[26] and Article 1 of the 1958 Convention on the Continental Shelf.[27] Additionally, it is necessary to review the motivating factors that prompted the conferees of the 1958 Convention on the Territorial Sea and the Contiguous Zone to formulate Article 4 of that Convention. These motivating factors included the Anglo-Norwegian Fisheries Case,[28] which initiated the use of the straight baseline

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[26] Convention on the Territorial Sea and the Contiguous Zone, adopted by the United Nations Conference on the Law of the Sea, April 29, 1958 (U.N. Doc. A/CONF.13/L.52).

[27] Convention on the Continental Shelf, adopted by the United Nations Conference on the Law of the Sea, April 29, 1958 (U.N. Doc. A/CONF.13/L.55).

[28] International Court of Justice, Fisheries Case (United Kingdom v. Norway) Judgment of 18 December 1951: Reports of Judgments, Advisory Opinions and Orders, Leyden: Sijthoff, 1951, pp. 116-206; hereafter cited as I.C.J. Reports.
International Court of Justice, Fisheries Case (United Kingdom v. Norway) Judgment of 18 December 1951: Pleadings, Oral Arguments, Documents, 4 vols., Leyden: Sijthoff, 1951; hereafter cited as I.CJ. Pleadings;
this cite covers all subsequent general references to the Anglo-Norwegian Fisheries Case.

method, and its influence upon the International Law Commission in formulating Article 5 of its 1956 Report.

A. The 1958 Convention on the Territorial Sea and the Contiguous Zone

In February 1958 representatives from eighty-six countries assembled in Geneva in order to codify the International Law of the Sea. They met for three months and in April 1958 completed the work on the following four conventions: Convention on the Territorial Sea and the Contiguous Zone; Convention on the High Seas;[29] Convention on the Continental Shelf;[30] and the Convention on Fishing and Conservation of the Living Resources of the High Seas.[31] Of particular interest to this report is Article 4 of the Convention on the Territorial Sea and the Contiguous Zone which pertains to straight baselines. Article 4 states:

> "1. In localities where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.
> "2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines

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[29] Convention on the High Seas, adopted by the United Nations Conference on the Law of the Sea, April 29, 1958 (U.N. Doc. A/CONF.13/L.53).

[30] Convention on the Continental Shelf (U.N. Doc. A/CONF.13/L.55).

[31] Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted by the United Nations Conference on the Law of the Sea, April 29, 1958 (U.N. Doc. A/CONF.13/L.54).

> must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.
>
> "3. Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them.
>
> "4. Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken, in determining particular baselines, of economic interest peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.
>
> "5. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.
>
> "6. The coastal State must clearly indicate straight baselines on charts, to which due publicity must be given."[32]

The criteria for establishing the use of the straight baseline method as set forth in Article 4 are almost meaningless on their face as far as specifying precise qualifications for the use of the straight baseline system or for acting as a guide for the actual drawing of the lines.[33] In general, Article 4 does establish that a straight baseline system can be utilized where particular geographical situations exist which involve the contour of a coast or island mass fringing a coast. However, the terminology of Article 4 is vague in setting forth the exact geographical proportions necessary to qualify. For instance, the term "deeply indented" does not prescribe an exact depth, and "immediate vicinity" does not indicate a precise distance from the shoreline.

It is also evident in paragraph 4 of Article 4 that the economic criterion is a secondary consideration to the

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[32]Whiteman, Digest of International Law, p. 142.

[33]William T. Burke, Some Comments on the 1958 Convention (Washington, D.C.: American Society of International Law, 1959), p. 200.

geographic qualification and may be only employed for the purpose of drawing particular baselines once the system has been established under paragraph 1 of Article 4.[34] However, a question arises as to how much "account may be taken" under the economic criteria in determining whether the baselines can deviate. Additionally, Article 4 does not specify whether the economics pertain to fishing, minerals or some other economic need.

Also to be noted, the terms in paragraph 2 of Article 4 "any appreciable extent" and "the general direction of the coast" are vague.

An important issue to be clarified is the purpose of drawing straight baselines. Are they for an exclusive fishing zone?--a larger territorial sea?--a greater inland water mass?--or an aid for mariners?

Article 4 does not present exact answers to these questions. As mentioned previously, it is necessary to consider other factors to clarify these issues.

The first important issue to be resolved is the determination of the purpose of the use of the straight baseline system. Article 5 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, as stated below, is an aid in outlining this purpose:

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[34]Sir Gerald Fitzmaurice, "Some Results of the Geneva Conference on the Law of the Sea, Part I: The Territorial Sea and the Contiguous Zone and Related Topics," International and Comparative Law Quarterly, VIII (1959), p. 77.

> "1. Waters on the land side of the baseline of the territorial sea form part of the internal waters of the State.
> "2. Where the establishment of a straight baseline in accordance with Article 4 has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided in Article 14 to 23 shall exist."35

This right of innocent passage renders the term "inland waters" almost meaningless because inland waters denote complete sovereignty and a right of innocent passage eradicates complete sovereignty. Hence, it is evident that the purpose is not to grant sovereignty over navigation.[36]

Article 5 further illustrates that expansion of the territorial sea was not the main purpose of establishing straight baselines by prescribing that the width of the territorial sea remain the same. That is, the territorial sea is measured from the seaward side of the straight baselines to the same distance previously claimed. Again this is an expansion of inland waters but the purpose is not for sovereignty over navigation or for that matter over mineral resources since this latter purpose is covered by Article 1 of the 1958 Convention on the Continental Shelf which reads:

> "For the purpose of these articles, continental shelf is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but out-

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[35]Convention on the Territorial Sea and the Contiguous Zone (U.N. Doc. A/CONF.13/L.52).

[36]Myres S. McDougal and William T. Burke, The Public Order of the Oceans (New Haven and London: Yale University Press, 1956), p. 126;
Burke, Some Comments on the 1958 Convention, p. 212.

> side the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands."37

It is evident from reviewing this Article that the mineral resources are independent of the straight baseline method.[38]

There are very few instances where practicality would demand the system of straight baselines in order to simplify a complicated problem of delimitation.[39] For example, the arc of circles method is a more beneficial guide for mariners in determining whether they are violating another nation's coastal zone. Under that system, a mariner inverts the arc of circles to determine his distance from the nearest land. See Chart 4.1. If his distance is greater than a zone claimed by the foreign nation, he is not in violation of their claim. If the straight baseline system was employed, vessels would have to be supplied with a publication of the straight baselines to be used as a guide in determining the locations of the baselines. Additionally, it would be more difficult for the local Coast Guard to patrol the areas that are delimited by imaginary straight baselines. Furthermore, it is a laborious task of delimitation by selection, deter-

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[37] Convention on the Continental Shelf (U.N. Doc. A/CONF.13/L.55).

[38] McDougal and Burke, The Public Order of the Oceans, p. 125.

[39] Ibid., p. 126.

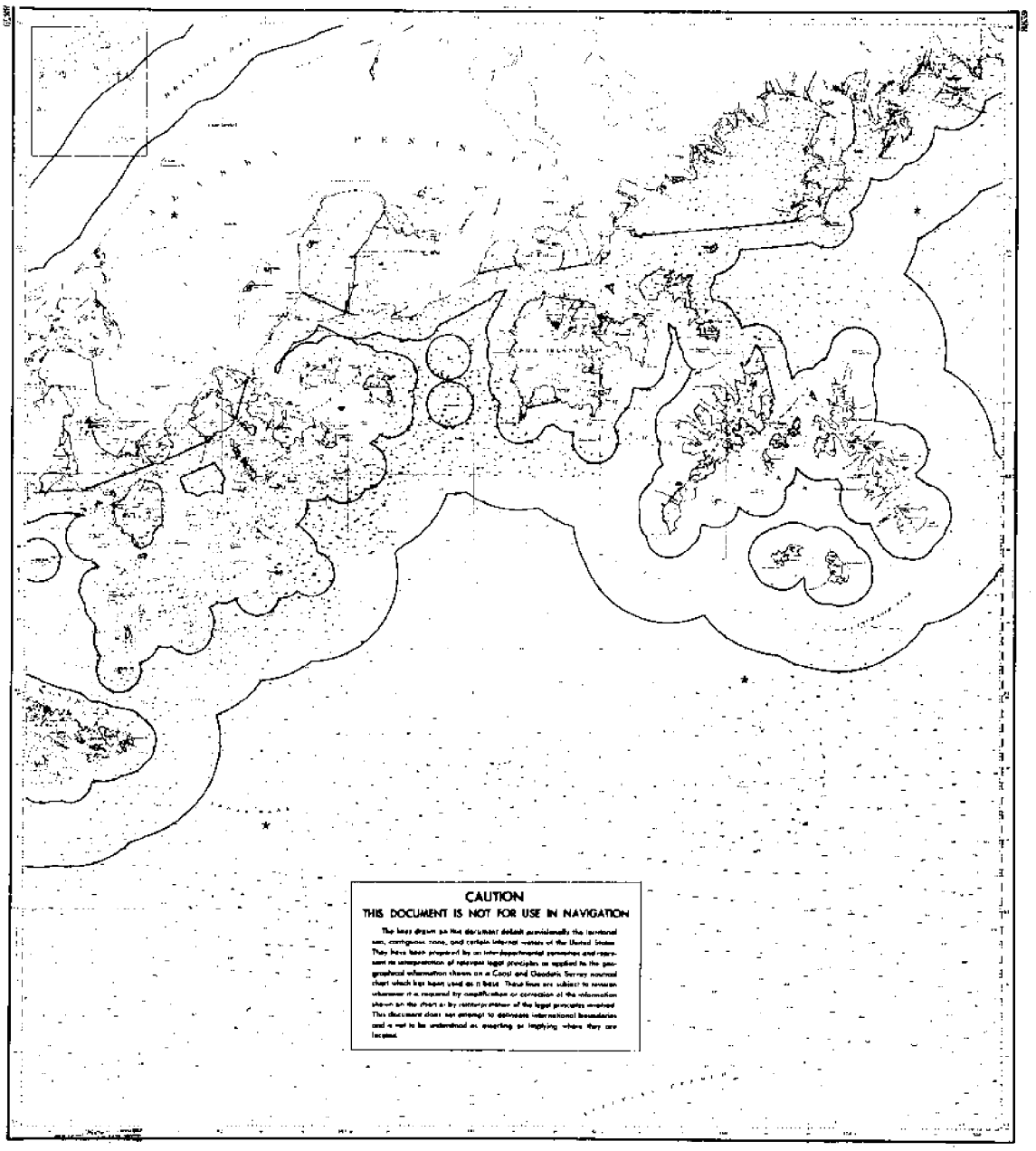

CHART 4.1. Arc of circles method* as applied to a portion of the Alaska Peninsula for delineating a fishery zone.

*Continuous series of arcs drawn with a radius, the length of which equals the breadth of the particular zone to be delineated.

Source: U.S. Department of Commerce, Environmental Science services Administration, Coast and Geodetic Survey (C.&G.S. Chart No. 8859).

mination and publication of the base points on marked charts.[40]

Although the conferees of the 1958 Convention on the Territorial and the Contiguous Zone did not specifically set forth the purpose for utilization of the straight baseline system in Article 4, they did infer that the system was for the expansion of exclusive coastal competence over fishery exploitation.[41]

B. The 1956 International Law Commission Report

In order to fully understand the decisions of the conferees of the 1958 Convention on the Territorial Sea and the Contiguous Zone, it is helpful to review the 1956 International Law Commission Report [42] which was used as a foundation for their opinion. A final draft of this Report was given by the International Law Commission to the United Nations General Assembly in 1956. The Report concerned the various aspects of the law of the sea including the straight baseline method. The success of the 1958 Convention is due to the excellence of the International Law Commission Report.[43] Similarities between Article 4 of the 1958 Convention on the Territorial

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[40]Sir Gerald Fitzmaurice, "The Law and Procedure of the International Court of Justice, 1951-54: Points of Substantive La, Part I: Maritime Law," British Yearbook of International Law, XXXI (1954), p. 421.

[41]McDougal and Burke, The Public Order of the Oceans, p. 126.

[42]Fitzmaurice, "Some Results of the Geneva Conference," p. 77.

[43]Ronald J. Allen, "The International Status of the Territorial Sea," Villanova Law Review, Vol. 5 (Villanova School of Law Press, Winter 1959-60), p. 207.

Sea and the Contiguous Zone and Article 5 of the 1956 International Law Commission Report are evident. Article 5 of the International Law Commission Report states:

> "1. Where circumstances necessitate a special regime because the coast is deeply indented or cut into or because there are islands in its immediate vicinity, the baseline may be independent of the low-water mark. In these cases, the method of straight baselines joining appropriate points may be employed. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters. Account may nevertheless be taken, where necessary, of economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage. Baselines shall not be drawn to and from drying rocks and drying shoals.
> "2. The coastal State shall give due publicity to the straight baselines drawn by it.
> "3. Where the establishment of a straight baseline has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as defined in article 15, through those waters shall be recognized by the coastal State in all those cases where the waters have normally been used for international traffic."[44]

The major difference between Article 4 of the Convention on the Territorial Sea and the Contiguous Zone and Article 5 as stated above is that stronger emphasis is placed on the economic criterion under Article 5. In Article 5, economics is not hindered by the fact that the straight baseline system must first be qualified under the geographic criterion. Also, it is not evident in Article 5 that the economic criterion is only implemented when drawing particular base-

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[44]Whiteman, Digest of International Law, p. 143.

lines that deviate from the general direction of the coast as is stated in Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone. As a result, it could be inferred that the economical criterion under Article 5 could carry the weight for implementation of the straight baseline system in an area where the geographical criterion is weak. This emphasis tends to show that the conferees of the International Law Commission considered economics to be weighed more heavily than is indicated in Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone.

In order to clarify the vague terms of Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, it is necessary to review the Anglo-Norwegian Fisheries Case since it has been definitely stated by the conferees of the 1956 International Law Commission that they desired to adhere to the Fisheries Case.[45] In addition,

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[45]Arthur Dean, "The Geneva Conference and the Law of the Sea: What was Accomplished," American Journal of International Law, Vol. 11 (1958), pp. 607-628; Whiteman, Digest of International Law, pp. 144-145: Some of the conferees at the 1958 Convention on the Law of the Sea and some of those who worked on Article 5 of the 1956 International Law Commission report desired to limit the baselines to a maximum of ten miles in length and a maximum distance between headland and island of five miles. However, they decided that they should follow the Anglo-Norwegian Fisheries Case judgment which did not set a limit on the length of the baselines.

legal experts in the field[46,47,48,49] have stated that in their opinion the conferees of the 1958 Convention on the Territorial Sea and the Contiguous Zone and the International Law Commission relied on the Fisheries Case when they formulated the straight baseline system in their articles.

C. Summary

The overall purpose of the straight baseline system was for the establishment of an exclusive fishery zone. This purpose cannot be deciphered from Article 4 of the Convention on the Territorial Sea and the Contiguous Zone or from Article 5 of the International Law Commission Report but can be understood when having regard for the intentions of the conferees who formulated these reports. It is also necessary to have regard for the Anglo-Norwegian Fisheries Case in order to determine the purpose of the straight baseline system.

A straight baseline system is internationally acceptable if the coastal situation of a state meets certain criteria. The main points of these criteria to be emphasized for the purposes of this paper are the geographic and economic factors.

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[46]Philip Jessup, "Territorial Sea," Columbia Law Review, Vol. 59 (New York: Columbia Law Review Association, Inc., 1959), p. 242.

[47]D. P. O'Connell, International Law in Australia (Law Book Co., Ltd., 1965), p. 238.

[48]Fitzmaurice, "Some Results of the Geneva Conference, p. 238.

[49]McDougal and Burke, The Public Order, p. 368.

However, these criteria are extremely vague and a better understanding requires an analysis of the Anglo-Norwegian Fisheries Case.

CHAPTER V

THE ANGLO-NORWEGIAN FISHERIES CASE

A. Introduction

In consequence of the fact that the view in the Anglo-Norwegian Fisheries Case was adopted almost in toto in Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone[50] and also because the terms of Article 4 are vague, it is beneficial to review the Fisheries Case before applying the straight baseline method. Complying with the actual criteria set forth in the Fisheries Case will put a state which desires to incorporate the straight baseline system in a better international position than if it merely followed the vague wording of Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone.

In addition to the fact that the conferees of the 1958 Convention on the Territorial Sea and the Contiguous Zone relied on the Fisheries Case in formulating Article 4, this Case was also valued as precedent in the international arena. In the strict sense, however, the Fisheries Case cannot be

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[50]Francis T. Christy, Jr., and Anthony Scott, The Commonwealth in Ocean Fisheries (Baltimore, Md.: John Hopkins Press, 1965), p. 168;
Jurai Andrassy, International Law and the Resources of the Sea (New York: Columbia University Press, 1970), p. 37.

considered precedent because international law does not follow the system of stare decisis.[51] Also, Article 59 of the International Court of Justice's statute[52] expressly provides that the decision of the Court has no binding force except between the parties and to the particular case being decided. It is also not precedent in the strict sense because in the Fisheries Case the Court emphatically stated that the controversary had exceptional features.[53] However, in his opening address, Sir Frank Soskice, representing the United Kingdom, stated the importance of the case being precedent not only to the parties specifically but to the international arena in general since the "Court's decision must contain important pronouncements concerning the rules of international law relating to coastal waters."[54] The Court also expressly mentioned that the straight baseline system is not contrary to international law and as a result Norway could apply it to her whole coast.[55] Also, prior to

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[51]H. A. Smith, "The Anglo-Norwegian Fisheries Case," The Yearbook of World Affairs (Frederick A. Proeger, Inc., 1953), p. 293.

[52]Wolfgang Friedmann, Oliver J. Lissitzyn, and Richard C. Pugh, International Law (St. Paul, Minn.: West Publishing Co., 1969), p. 1194.

[53]Douglas H.N. Johnson, "Icelandic Fishery's Limits," International and Comparative Law Quarterly, I (1952), pp. 179-180.

[54]International Court of Justice Pleadings, Statements in Court, Vol. 1, p. 3;
Jens Evensen, "The Anglo-Norwegian Fisheries Case and Its Legal Consequence," American Journal of International Law, XLVI (1952), p. 619.

[55]Evensen, "The Anglo-Norwegian Fisheries Case," p. 628.

the delivery of the judgment, Great Britain informed the Court that she reserved the right, pending the outcome of the case, to claim a straight baseline system off the northwestern coast of Scotland where the geographical situation is somewhat similar to the coast of Norway. This view from the United Kingdom, one of the most ardent supporters of a narrow territorial sea, was a preview to the reaction of other nations to the decision.[56]

Presently the following nations have utilized the straight baseline method: Norway, Malagasy Republic with intervals up to 75 miles, Canada[57], New Zealand, United Kingdom, Argentina, Iceland with intervals up to 68 miles, Bulgaria, Cambodia, China, Dominican Republic, Ecuador, Sweden, Egypt, Iran, Saudi Arabia, Venezuela, Yugoslavia, France and Kuvait.[58]

B. Proceedings

1. Preview.--As a result of intensive exploitation of Norwegian coastal fishing grounds by British trawlers, Norway issued the Royal Decree of 1935 which provided for an exclusive fishing zone. This zone was established by a series of straight baselines connecting the headlands of bays and

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[56] Ibid.

[57] Jacques Von Morin, "La Zone de Pêche Exclusive due Canada," The Canadian Yearbook of International Law, 1964, Vol II, pp. 77-106;
Jacques Von Morin, "Les Zones de Pêche de Terre--Neuve et du Labrador," The Canadian Yearbook of International Law, 1968, Vol. VI, pp. 91-114.

[58] D. P. O'Connell, International Law (London: Stevens & Sons, 1970), p. 479.

all the Norwegian fjords on the mainland and lines were drawn between the most extreme of islands and islets which were situated off the coast. These offshore islands and islets are called "skjaergaard" (literally translated, rock rampart) and extend approximately 400 to 500 miles along the coast of Norway.[59] See Chart 5.1.

Although the Royal Decree of 1935 primarily regarded only an exclusive fishing zone, the area also concerned, according to the contesting parties, the waters which Norway considered to be her territorial sea.[60] In other words, Norway not only used these baselines to measure the extent of her exclusive fishing zone but also to measure the extent of her territorial sea. As a result, the Court often made the mistake of discussing the case in terms of the territorial sea when in essence the problem was a violation of fishing zones.[61]

Following the seizure of her fishing vessels within the zone delimited by the 1935 Decree, the United Kingdom instituted proceedings in the International Court of Justice

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[59]Teruo Kobayashi, The Anglo-Norwegian Fisheries Case of 1951 and the Changing Law of the Territorial Sea (Gainesville, Fla.: University of Florida Press, Spring 1965), pp. 21-22.

[60]I.C.J., Reports, p. 125: "Although the Decree of July 12th, 1935 refers to the Norwegian fisheries zone and does not specifically mention the territorial sea, there can be no doubt that the zone delimited by this decree is no other than the sea area which Norway considers to be territorial sea."

[61]Richard Young, "The Anglo-Norwegian Fisheries Case," American Bar Association Journal, XXXVIII (1952), p. 243.

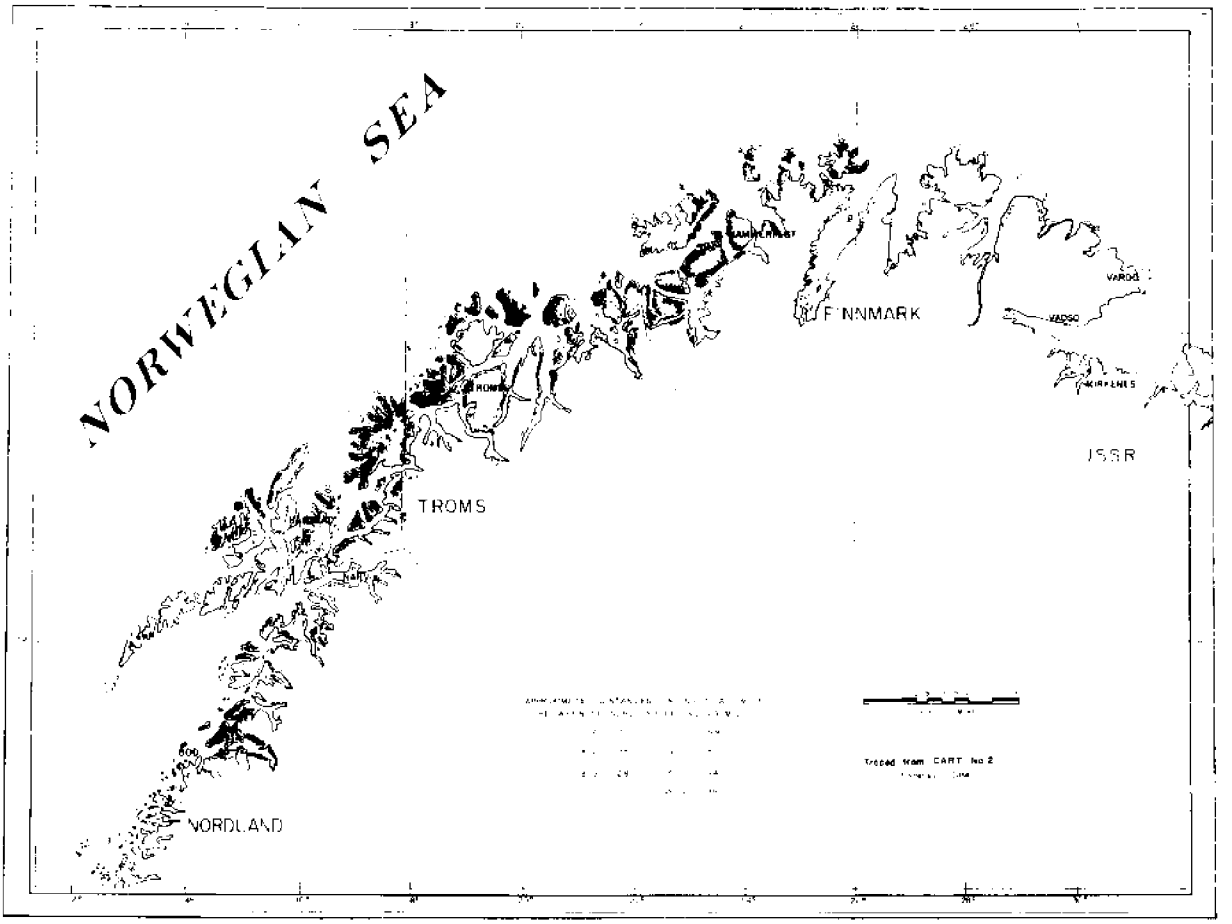

CHART 5.1. Portion of Norwegian coastline which is deeply indented, cut into and fringed with islands in its immediate vicinity.

Source: Kirk W. Stanley, Proposed Sea Boundary for Alaska, (Printed courtesy of the National Bank of Alaska, 1970), back of appendix.

against Norway. Norway accepted the compulsory jurisdiction of the Court in accordance with Article 36, Paragraph 2 of the Statute of the International Court of Justice.[62] The United Kingdom contended that the baselines should be the actual low-water mark following the sinuosities of the coast, except in the case of bays. Since Norway had a strong historical claim to a four-mile territorial sea, this issue was not contested in the case.

2. Court Opinion.--The Court commenced the proceedings with a discussion of the geographic and economic characteristics of the Norwegian coast and the "skjaergaard." The Court stressed the deep penetrations, the convolutions of the coast, and the dependence of the local populations on fishing for their livelihood.[63] The Court held that these realities must be considered when appraising the validity of the Royal Decree of 1935 in international law.[64]

The Court's first three conclusions were as follows:[65]

1. The low-water mark rather than the high-water mark was the proper point to use to measure the territorial sea.[66]

2. These base points could be situated on land that

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[62]Kobayashi, The Anglo-Norwegian Fisheries Case, p. 21

[63]Friedmann, Lissitzyn and Pugh, International Law, p. 534.

[64]Ibid.

[65]Whiteman, Digest of International Law, p. 155.

[66]I.C.J., Reports, p. 128.

might sometimes be below the sea level. However, none of Norway's points were more than four miles (Norway's territorial sea) from permanently dry land.[67]

3. Straight baselines in "certain situations weren't contrary to international law." This finding was stated in a passage in the Court's opinion which read:

> "Three methods have been contemplated to effect the application of the low-water mark rule. The simplest would appear to be the method of the tracé parallèle, which consists of drawing the outer limit of the belt of territorial waters by following the coast in all its sinuosities. This method may be applied without difficulty to an ordinary coast, which is not too broken. Where a coast is deeply indented and cut into, as is that of Eastern Finnmark, or where it is bordered by an archipelago such as the 'skaergaard' along the western sector of the coast here in question, the base-line becomes independent of the low-water mark, and can only be determined by means of a geometric construction. In such circumstances the line of the low-water mark can no longer be put forward as a rule requiring the coast line to be followed in all its sinuosities; nor can one speak of exceptions when contemplating so rugged a coast in detail. Such a coast, viewed as a whole, calls for the application of a different method. Nor can one characterize as exceptions to the rule the very many derogations which would be necessitated by such a rugged coast. The rule would disappear under the exceptions. (The Registry of the International Court of Justice has supplied the following corrected translation of the authoritative French text according to I.L.C. Commentary 1: "Nor can one characterize as exceptions to the rule the very many derogations which would be necessitated by such a rugged coast; the rule would disappear under the exceptions. Such a coast, viewed as a whole, calls for the application of a different method; that is, the method of base-lines, which, within reasonable limits may depart from the physical line of the coast.")
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> "It is true that the experts of the Second Sub-Committee of the Second Committee of the 1930 Conference for the codification of international law formulated the low-water mark rule somewhat strictly ('following all the sinuosities of the coast'). But they were at the

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[67] Ibid.

same time obliged to admit many exceptions relating to bays, islands near the coast, groups of islands. In the present case this method of tracé parallèle, which was invoked against Norway in the Memorial, was abandoned in the written Reply, and later in the oral argument of the Agent of the United Kingdom Government. Consequently, it is no longer relevant to the case. 'On the other hand,' it is said in the Reply, 'the courbe tangente--or, in English, 'envelopes of arcs of circles' --method is the method which the United Kingdom considers to be the correct one.'

"The arcs of circles method, which is constantly used for determining the position of a point or object at sea, is a new technique in so far as it is a method for delimiting the territorial sea. This technique was proposed by the United States delegation at the 1930 Conference for the codification of international law. Its purpose is to secure the application of the principle that the belt of territorial waters must follow the line of the coast. It is not obligatory by law, as was admitted by Counsel for the United Kingdom Government in his oral reply. In these circumstances, and although certain of the Conclusions of the United Kingdom are founded on the application of the arcs of circles method, the Court considers that it need not deal with these Conclusions in so far as they are based upon this method.

"The principle that the belt of territorial waters must follow the general direction of the coast makes it possible to fix certain criteria valid for any delimitation of the territorial sea; these criteria will be elucidated later. The Court will confine itself at this state to noting that, in order to apply this principle, several States have deemed it necessary to follow the straight base-lines method and that they have not encouraged objections of principle by other States. This method consists of selecting appropriate points on the low-water mark and drawing straight lines between them. This has been done, not only in the case of well-defined bays, but also in cases of minor curvatures of the coast line where it was solely a question of giving a simpler form to the belt of territorial waters.

"It has been contended, on behalf of the United Kingdom, that Norway may draw straight lines only across bays. The Court is unable to share this view. If the belt of territorial waters must follow the outer line of the 'skaergaard', and if the method of straight baselines must be admitted in certain cases, there is no valid reason to draw them only across bays, as in Eastern Finnmark, and not also to draw them between islands, islets and rocks, across the sea areas separating the, even when such areas do not fall within the conception of a bay. It is sufficient that they should be

situated between the island formations of the 'skjaergaard', inter fauces terrarum."[68]

Following the Court's decision that straight baseline systems weren't necessarily against international law in certain situations, it then examined Norway's system and set forth the following three criteria to provide the Court with an adequate basis to make a decision:[69]

1. "The baselines shall not depart from the general direction of the coast."

2. In the choice of baselines, the sea areas must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

3. Besides geographics, economic interests "peculiar to the area, the reality and importance of which are clearly evidenced by long usage should not be overlooked."[70]

The Court found that Norway met all these qualifications. However, as to the first criterion, the Court did not illustrate how the Norwegian baselines conformed to the general direction of the coast. As to the second criterion, the Court stated that Norway qualified because the "skjaergaard" constituted a whole with the mainland.[71] As to the third criterion, the Court stated:

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[68]Whiteman, Digest of International Law, pp. 156-158.

[69]Ibid., p. 158.

[70]I.C.J., Reports, p. 133.

[71]Whiteman, Digest of International Law, p. 158.

> "Along the coast are situated comparatively shallow banks vertible under-water terraces which consitute fishing grounds where fish are particularily abundant; these grounds were known to Norwegian fishermen from time immemorial. In these barren regions the inhabitants derive their livelihood from fishing."72

In addition, the Court stated that historical data especially in the case of Lopphavet Basin, lends weight to the survival of the rights to these fishing grounds delimited in the 1935 Royal Decree. This decision was based on the vital needs of the population provided by the fishing grounds and proved by long usage. These economics could be considered when drawing the baselines as long as the baselines were moderate and reasonable.[73]

The Court then stated that the historical title was not to claim particular waters but just to illustrate Norway's application of the general law. The Court then looked at the Norwegian fishing claims and said that Norway had applied this system consistently since 1869 until the time this dispute arose.[74] The Court also stated that the United Kingdom was previously aware of the Norwegian system but failed to protest it until 1933.[75]

The Court concluded its opinion by discussing two specific baselines: 11-12 and 20-21. The United Kingdom objected to the lengths of these baselines. See Chart 5.2. Baseline 11-12,

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[72] Ibid., pp. 127-128.

[73] I.C.J., Reports, p. 142.

[74] Ibid., p. 138.

[75] Ibid., p. 139.

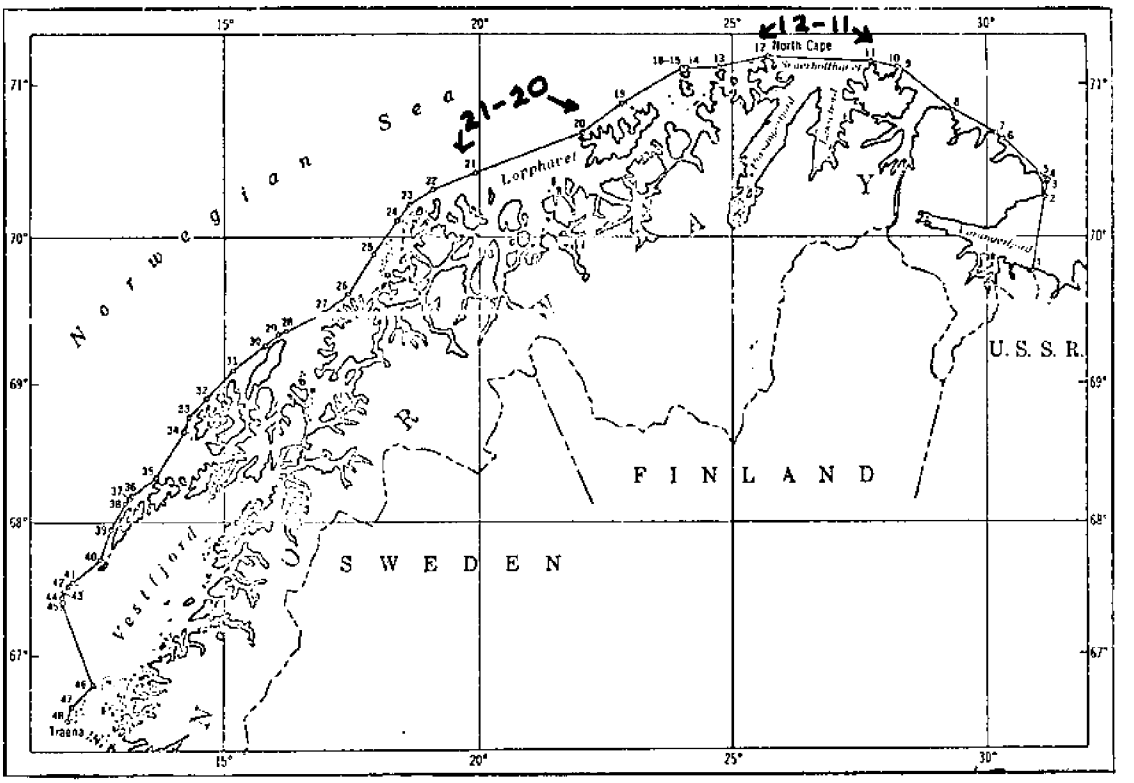

CHART 5.2. Portion of straight baseline system along Norwegian coast. Baselines 11-12 and 20-21 indicated by arrows.

Source: Robert L. Hartig, "Applying the Straight Baseline Concept in Measuring Alaska's Coastal Boundary," Paper presented at Alaska Surveying and Mapping Convention, Anchorage, Alaska, February 4, 1971.

which was 44 nautical miles long across Svaerholthavet Basin, was deemed by the Court to close an historic bay and was considered valid. Baseline 20-21, which was 48 nautical miles long across Lopphavet Basin, was considered by the Court to be in the general direction of the coast regardless of its length. The Court further stated that even if baseline 20-21 wasn't in the general direction of the coast, the historic and economic situation of the area lends weight to make the baseline permissible. The Court then related that, in addition, this line was moderate and reasonable.[76]

The Court found by ten votes to two that the 1935 Royal Decree as a whole was not contrary to international law and by eight votes to four that the particular baselines were not contrary to international law.[77]

C. The Concurring and Dissenting Opinions

Judge Alvarez, in his concurring opinion, related that the Anglo-Saxon concept of law in this modern world is not adequate. Alvarez asserted the fact that the formation of present international law is no longer based primarily on judicial factors but other factors, such as political, social, economical and psychological issues, must also be considered. He stated in his opinion:

> "Having regard to the great variety of the geographical and economic conditions of states, it is not possible to lay down uniform rules, applicable to all, governing

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[76]Ibid., p. 142.

[77]Kobayashi, The Anglo-Norwegian Fisheries Case, p. 24.

> the extent of the territorial sea and the way in which it is to be reckoned. In order for a state to make a valid claim to delimitation and breadth of the territorial sea, a state must indicate the reasons, geographic, economic, etc., which provide the jurisdiction thereof."78

Judge Hackworth further stated:

> "that he concurrs in the operative part of the judgment but desires to emphasize that he does so for the reason that he considers that the Norwegian government has proved the existence of an historic title to the disputed areas of water."79

Judge Hsu Mo split his opinion. He accepted the operative part of the Norwegian method qualified by historic grounds but stated that the Norwegian system "is not so much the direct application of the general rule as the degree of deviation from the general rule that is to be considered."[80] By this statement he meant that the general rule was to follow the normal baseline method and that Norway deviated from the normal method but her deviation was valid in international law because she has proven an historic title to the waters. However, Judge Hsu Mo dissented on the decision concerning the baselines drawn across Svaerholthavet and Lopphavet Basins, claiming that Norway hadn't proven her historic title in these two instances.[81]

Judge McNair and Judge Read both dissented in the case. They claimed that Norway hadn't proven an historic title and

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[78] I.C.J., Reports, p. 150.

[79] Ibid., p. 144.

[80] Ibid., pp. 154-157.

[81] Ibid., pp. 154-157.

therefore must follow the coastline rule and the ten-mile rule for bays. They also felt that the straight baselines should not be "drawn by the coastal state for the purpose of giving effect, even within reasonable limits, to its economic and other social interests, and to other subjective factors."[82]

D. Analysis

In analyzing the Fisheries Case it is helpful to categorize the premises into three groups: geographic, economic and historic.

1. Geographics

a. Coast as a Whole.--Norway's coast is remarkable and no other European coastline is so tattered and cut into by fjords and sheltered by thousands of islets, islands and skerries. While the main outline of the coast is 2,650 kilometers long, the full length is estimated to be about 20,000 kilometers. The most spectacular coastal landscapes with immense heights and very deep slopes are found on the west coast of Norway. The eastern Norwegian coast is more moderate.[83]

The coast of Norway can be divided into five main regions (See Chart 5.3): Ostlandet (east Norway); Sorlandet (southernmost Norway); Vestlandet (west Norway); Trondelag (the Trond heim region); and Nord-Norge (north Norway). These five areas are divided into counties, which are also listed in Chart 5.3.

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[82] Ibid., pp. 158-165 and 186-206.

[83] Tore Sund, "Chapter 11: Norway," in The Geography of Norden, ed. by Axel Somme (Svenska Bokforlaget, 1968), p. 235.

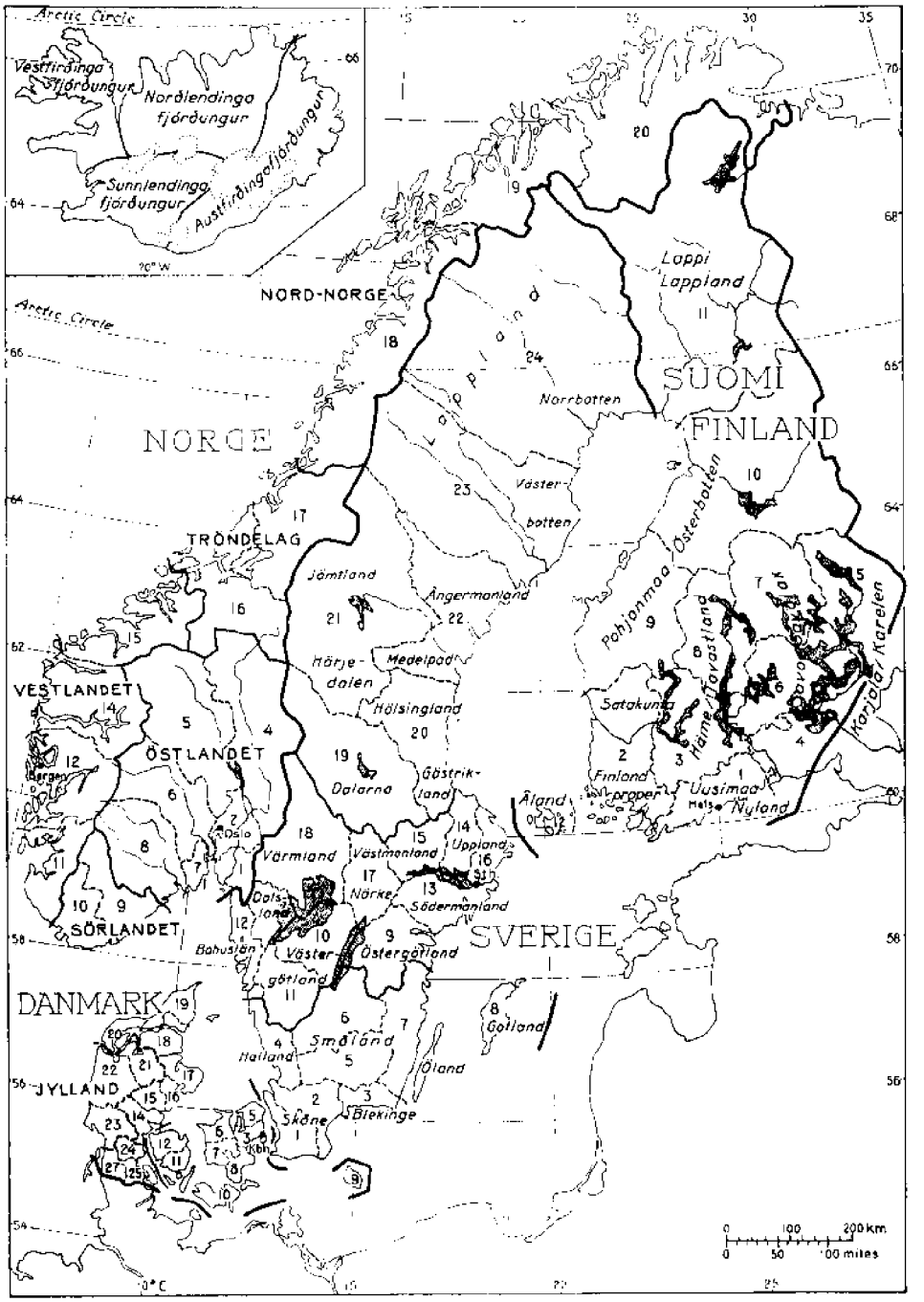

CHART 5.3. Regional and County Map of Norway.

Source: Tore Sund, "Chapter 11: Norway," in A Geography of Norden, ed. by Axel Somme (Svenska Bokforlaget, 1968), Preface.

The region of Ostlandet is comprised of a few large catchment areas that drain into or near the Oslo Fjord. Vestlandet is very dissected with many short valleys leading down to the Great Fjords. Solandet is similar to Ostlandet with moderate mountains. Its coast is like Vestlandet with many fjords and is sheltered by a string of islands and islets, which are smaller than those fringing Vestlandet.[84]

Finnmark, one of the three coastal counties of Nord-Norge (see county No. 20 in Chart 5.3), has the longest unsheltered coast in Norway with long broad fjords wide open to the Artic Ocean. Troms, another coastal county in Nord-Norge (see county No. 19 in Chart 5.3), has magnificant fjords and mountains and large islands. In Nordland, the third coastal county (see No. 18 in Chart 5.3), the mountains are smaller than in Troms but still form a picturesque background to the strand flat areas (Hummocky lowlands).[85]

Trondelag is a transition zone between Vestlandet and Nord-Norge.

The area covered by the 1935 Royal Decree (see Chart 2.1, page 9) only includes Nord-Norge with its three coastal counties: Finnmark, Troms and Nordland. However, in its decision the Court allowed Norway to utilize straight baselines around its entire coast.[86]

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[84] Ibid., pp. 241-242.

[85] Ibid.

[86] Evensen, "The Anglo-Norwegian Fisheries Case," p. 628.

The Court described the coast of Norway as follows:

"The coastal zone concerned in the dispute is of considerable length. It lies north of latitude 66° 28.8' N., that is to say, north of the Artic Circle, and it includes the coast of the mainland of Norway and all the islands, islets, rocks and reefs, known by the name of the 'skjaergaard' (literally, rock rampart), together with all Norwegian internal and territorial waters. The coast of the mainland, which, without taking any account of fjords, bays and minor indentations, is over 1,500 kilometres in length, is of a very distinctive configuration. Very broken along its whole length, it constantly opens out into indentations often penetrating for great distances inland: the Porsangerfjord, for instance, penetrates 75 sea miles inland. To the west, the land configuration stretches out into the sea: the large and small islands, mountainous in character, the islets, only at low tide, are in truth but an extension of the Norwegian mainland. The number of insular formations, large and small, which make up the 'skjaergaard', is estimated by the Norwegian Government to be one hundred and twenty thousand. From the southern extremity of the disputed area to North Cape, the 'skjaergaard' lies along the whole of the coast of the mainland; east of the North Cape, the 'skjaergaard' ends, but the coast line continues to be broken by large and deeply indented fjords.

"Within the 'skjaergaard', almost every island has its large and its small bays; countless arms of the sea, straits, channels and mere waterways serve as a means of communication for the local population which inhabits the islands as it does the mainland. The coast of the mainland does not constitute, as it does in practically all other countries, a clear dividing line between land and sea. What matters, what really constitutes the Norwegian coast line, is the outer line of the 'skjaergaard.'

"The whole of this region is mountainous. The North Cape, a sheer rock little more than 300 metres high, can be seen from a considerable distance; there are other summits rising to over a thousand metres, so that the Norwegian coast, mainland and 'skjaergaard', is visible from far off.

"Along the coast are situated comparatively shallow banks, veritable under-water terraces..."[87]

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[87] I.C.J., Reports, p. 127.

When reviewing the geographics, it is beneficial to see how the Court applied the criteria to the Norwegian system in general and then to understand how the Court acknowledged the geographics in the drawing of particular baselines.

It is obvious that the nature of the Norwegian coastline weighed heavily with the Court in approving the use of straight baselines.[88] For example, the Court stated in its opinion that it is "led to conclude that the method of straight baselines established in the Norwegian system was imposed by the peculiar geography of the Norwegian coast."[89] Throughout the Court's opinion there were the following references to the distinctive configuration of the Norwegian coast:

1. "The coast of the mainland...is of a very distinctive configuration. Very broken along its whole length..."90

2. "The coast of the mainland does not constitute, as it does in practically all other countires, a clear dividing line between land and sea."91

3. "Such are the realities which must be borne in mind in appraising the validity of the United Kingdom contention that the limits of the Norwegian fisheries zone laid down in the 1935 Decree are contrary to international law."92

4. "...the outer line of the 'skjaergaard'...must be taken into account in delimiting the belt of Norwegian territorial waters. This solution is dictated by geographic realities."93

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[88]Whiteman, Digest of International Law, pp. 161-162.

[89]I.C.J., Reports, p. 139.

[90]Ibid., p. 127.

[91]Ibid., p. 128.

[92]Ibid.

[93]Ibid.

5. "...so rugged a coast...calls for the application of a different method."94

6. "...a coast, the geographical configuration of which is as unusual as that of Norway."95

7. "...the starting-point for calculating the breadth of the territorial waters should be a line drawn along the 'skjaergaard' between the furthest rocks and, where there is no 'skjaergaard', between the extreme points.... This conception accords with the geographical characteristics of the Norwegian coast and is not contrary to the principles of international law."96

8. "...to make the boundary follow the sinuosities of the coast or to cause its position to be determined by means of circles...would be very difficult to adopt or to enforce in practice, having regard to the special configuration of this coast."97

9. "The Court...considers that the basin in question [referring to Lopphavet baseline]must be contemplated in the light of all the geographical factors involved."98 (Italics mine)

The geographical points illustrated in the Court's opinion were the factors that prompted the International Law Commission to approve of the Norwegian System in its 1956 Report, which in turn was incorporated into Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone.[99]

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[94] Ibid., p. 129.

[95] Ibid., p. 133.

[96] Ibid, p. 134.

[97] Ibid., p. 135.

[98] Ibid., p. 141.

[99] C. H. M. Waldock, "The Anglo-Norwegian Fisheries Case," British Yearbook of International Law, XXVIII (1951), pp. 114-171;

Fitzmaurice, "The Law and Procedure of the International Court of Justice," p. 399.

When the Court described the islands proximately situated off the coast of Norway as a continuous fringe, it qualified its position by stating that the mere existence of islands off any coast is not a sufficient ground by itself for utilization of the straight baseline system.[100] The Court related that a nation's mainland coast must meet other factors of the geographic criterion before straight baselines can be drawn around the "skjaergaard," or island fringe.[101] This qualification was not emphasized in paragraph 1 of Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone which states:

> "1. In localities where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured."[102]

When the Court mentioned the fact that the mountainous Norwegian coast "is visible from far off," it was never stated whether this factor was relevant.[103] In all probability it was not relevant except perhaps to describe the geological formation of the coast.

The Court did not directly state why this type of a baseline is necessary because of the geographic configuration of the Norwegian coast. The only time when the Court directly

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[100] Fitzmaurice, "Some Results of the Geneva Conference," p. 78.

[101] Fitzmaurice, "The Law and Procedure of the International Court of Justice," p. 392.

[102] Whiteman, Digest of International Law, p. 142.

[103] Waldock, "The Anglo-Norwegian Fisheries Case," p. 116.

confronted this issue was in reference to the St. Just case which held in 1934 in the Norwegian Supreme Court that it would be too difficult to adopt or enforce the arc of circles method in this area.[104] As a result, the Court must have been of the opinion that the economics demanded the straight baseline system but felt the need to justify the claim with a more internationally reconcilable factor such as geographics. While the Court, as will be mentioned in the following Chapter, explained in detail why economics necessitated use of the straight baseline system, that is, for an exclusive fishing zone, it never clearly defined the reason why the particular geographics of the Norwegian coast demanded a straight baseline system. In the Fisheries Case, geographics were only disputed in relation to the character of particular baselines and not to the coastal configuration as a whole.[105]

b. Particular Baselines.--As mentioned, according to the Court, geographical factors must be regarded in drawing particular baselines; that is, the geographic location of the base points must meet four qualifications. First, they must be situated so that the straight baselines do not depart in any appreciable extent from the general direction of the

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[104]Whittemore Boggs, "Delimitation of the Territorial Sea: The Method of Delimitation Proposed by the Delegation of the United States at the Hague Conference for the Codification of International Law," American Journal of International Law, XXIV (1930), p. 555.

[105]D. H. N. Johnson, "The Anglo-Norwegian Fisheries Case," International and Comparative Law Quarterly, I (1952), p. 151.

coast.[106] Secondly, the base points must be in such a geographic location that when the lines are drawn, the waters enclosed will be sufficiently closely linked to the land domain to be subject to a regime of internal waters.[107] Third, the base points must be plotted so that lines drawn between island formations are inter fauces terrarum[108] (between the arms of land). The last geographic requirement is that the base points must be situated so that the lines will be drawn moderately and reasonably.[109]

The first geographical qualification as stated by the Court is that "baselines must not depart to any appreciable extent from the general direction of the coast."[110] For relatively straight coasts or evenly curved coasts, the coast itself usually marks its general direction. However, when the coast is deeply indented, then the actual coastline would not represent the general direction and may even run in an opposite direction. This was the reason, according to the Court, to permit straight lines to be drawn across the water in order to make the coastline smooth. In other words, the Court considered the coastline rule as being hinged on the more fundamental principle of following the general direction of the coast.[111]

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[106] I.C.J., Reports, p. 133.

[107] Ibid.

[108] Ibid., p. 130.

[109] Ibid., p. 142.

[110] Ibid., p. 133.

[111] Fitzmaurice, "The Law and Procedure," pp. 371 & 428.

In the Fisheries Case, Great Britain challenged Norway's delimitation of two particular baselines contending that these lines did not follow the general direction of the coast. In the first instance, Great Britain disputed the line across Svaerholthavet Basin and then challenged the line across Lopphavet Basin.[112] The Court justified the line across Svaerholthavet Basin since it was denoted to be an historic bay.[113] However, in the case of Lopphavet Basin, where a baseline is drawn 48 nautical miles long, the Court held that it was an ill-defined geographic whole and sufficient to be considered in the general direction of the coast.[114] Then the Court described the rule of general direction of the coast as being:

> "devoid of any mathematical precision. In order properly to apply the rule, regard must be had for the relation between the deviation complained of and what, according to the terms of the rule, must be regarded as the general direction of the coast. Therefore, one cannot confine oneself to examining one sector of the coast alone, except in a case of manifest abuse; nor can one rely on the impression that may be gathered from a large scale chart of this sector alone."115

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[112]Across the Svaerholthavet the baseline is drawn from Nordkyn to Knivskjaerodde (which is west of North Cape). The line is 39 miles long across the Lopphavet Basin. The line is from the northwest point of the island of Soroy to a rock called Vesterfollet Gaasan (about 8 1/2 miles northwest of the island of Fugloy). The line is 44 miles long then there is a further line 18 miles long to a rock called Sannefollet, around 3 miles northwest of Kraloy.

[113]I.C.J., Reports, p. 141.

[114]Ibid.

[115]Ibid., p. 142.

As a result of this decision, it can be inferred that a deviation in a situation comparable to Lopphavet Basin will be tolerated in international law. It was also stated that in order to determine whether the deviation is not following the general direction of the coast, large charts of the particular area are insignificant, whereas small charts covering the whole coast would be proper in defining the deviation.

It is obviously noted that the term "any appreciable extent" is vague. It suggests three possible connotations. In one instance it could indicate that a careful inspection might render the baseline in abuse of the rule of following the general direction of the coast and thus point out minor deviations. The term could also infer that in order for a deviation to be an abuse of the rule, it must be noticeable at a glance and impossible to overlook. This would only point out the largest deviations. Lastly, the term could require a medium viewing test between the above two definitions; that is, the deviation is moderately recognizable.[116] It appears that the Court would consider only a manifest abuse from the general direction of the coast as a deviation "to any appreciable extent" since the Court allowed the line to be drawn across Lopphavet Basin.

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[116]Fitzmaurice, "The Law and Procedure of the International Court of Justice," p. 405.

The second geographic criterion is that the waters enclosed by the lines must be subject to the regime of internal waters. This term is also nebulous when regarding Lopphavet Basin. If a small scale map was viewed, the waters might be considered enclosed by the "skjaergaard." However, in actuality the Basin is open on its seaward side by a line drawn 48 nautical miles long enclosing an area of 1,200 square miles. If a person was in a boat on that imaginary line, he would be 15 miles from the nearest point on the mainland. In all probability the area might be considered territorial, but it definitely does not have the characteristics of being inland waters.[117]

The thrid geographic criterion is that the lines be drawn inter fauces terrarum (between the arms of land). This qualification seems irrelevant since all water-drawn baselines are drawn between the arms of land. If they weren't drawn between two land points, they wouldn't be considered straight baselines but rather normal baselines.[118]

The fourth geographic criterion states that the lines be moderate and reasonable. In considering this qualification, the Court was not referring to length but rather that any deviation must be moderate and reasonable in its general character.[119] The Court felt that the lines across Lopphavet

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[117] Ibid., p. 408.

[118] Ibid.

[119] I.C.J., Reports, p. 142.

Basin were in the general direction of the coast when viewing the coast as a whole not on a large scale chart. The Court related that, moreover, even if the lines were an abuse of the general direction of the coast, they were moderate and reasonable.[120] This suggests that moderate and reasonable is a supplementary criterion to alleviate an abuse from the general direction of the coast. However, it seems logical that if there is a manifest abuse from the general direction of the coast, the lines will not be considered moderate and reasonable.

As previously mentioned, the purpose of drawing the straight baseline system in the Fisheries Case was for the creation of an exclusive fishing zone. This is a socio-economical purpose unrelated to the geographics of the coast. Therefore, geographics alone should not be the sole consideration for the formation of a desirable community policy when drawing particular baselines. It is necessary to have regard for the social process by which the areas are exploited.[121] Consequently, it is advisable for a country desiring to establish a straight baseline system to utilize economic claims to strengthen its position.

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[120] Ibid.

[121] McDougal and Burke, The Public Order of the Oceans, pp. 308-309.

2. Economics

a. Fishing Industry as a Whole.--In the Fisheries Case, Norway relied heavily on economic factors to qualify the delimitation of her exclusive fishing zone. Fishing is the oldest of all Norwegian industries. In Norway the total annual catch contributes to less than two percent of the national income, but fish processing and marketing account for approximately one-seventh of Norway's total exports. In other words, Norway catches an over-abundant amount of fish than can be consumed in the country and approximately a two-thirds surplus of the Norwegian catch is sold abroad.[122] Table 1 illustrates the Norwegian catch and exports in metric tons and the number of fishing vessels from 1948 to 1950. The Norwegian catch has increased from one million tons prior to Wold War II to approximately three million tons at present. An important factor contributing to this increase in yield is a rise in herring and mackerel catches.[123]

Figure 5.4 illustrates the value distribution along the coast of Norway. Figure 5.5 shows that the districts with the largest landings also have the largest proportion of vessels. Norway has a fleet of 36,000 vessels which consists of many small and open boats, 24,000 of which have no decks.

During the 1950's the number of Norwegian fishermen declined. Of a total of 60,000 fishermen, only one-third were

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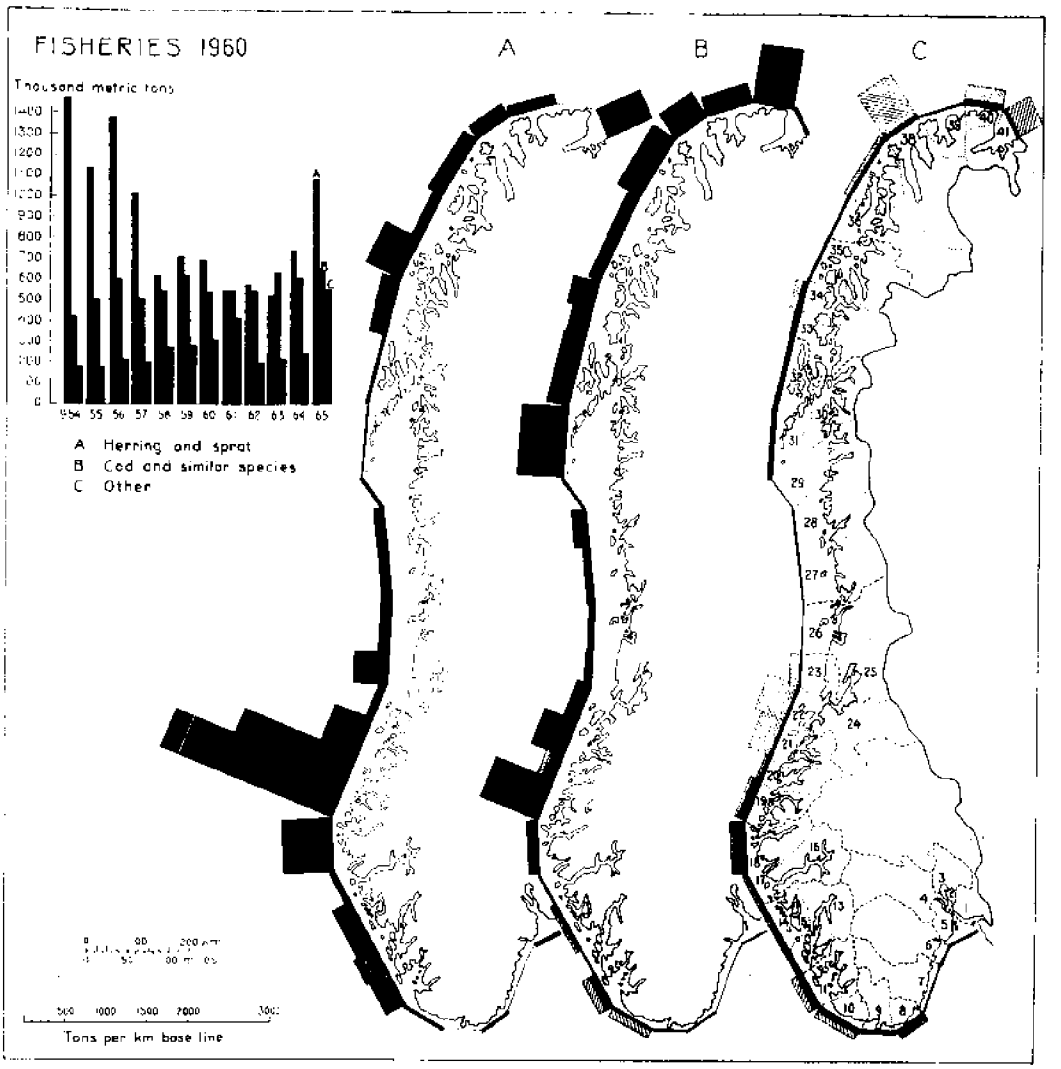
[122]Sund, "Norway," p. 251.

[123]Ibid., p. 252.

TABLE 1

	1948	1949	1950
Norwegian Catch (in metric tons)			
Total	1,504,027	1,297,287	1,467,712
Major Species: Salmon & Related Species	1,619	4,955	4,651
Flat Fishes	10,010	8,794	11,438
Cod & Related Species	398,587	385,848	425,700
Herring & Related Species	963,865	730,980	895,719
Mackerel (which includes Tuna)	13,465	16,926	12,417
Perch & Bream	3,471	2,461	3,159
Other Fishes	1,541	3,047	5,590
Norwegian Exports			
Quantity (in metric tons)	513,423	528,157	509,915
Value (in Norwegian Kroner)	741,756	785,590	879,801
Number of Norwegian Vessels	90,376	88,261	93,810

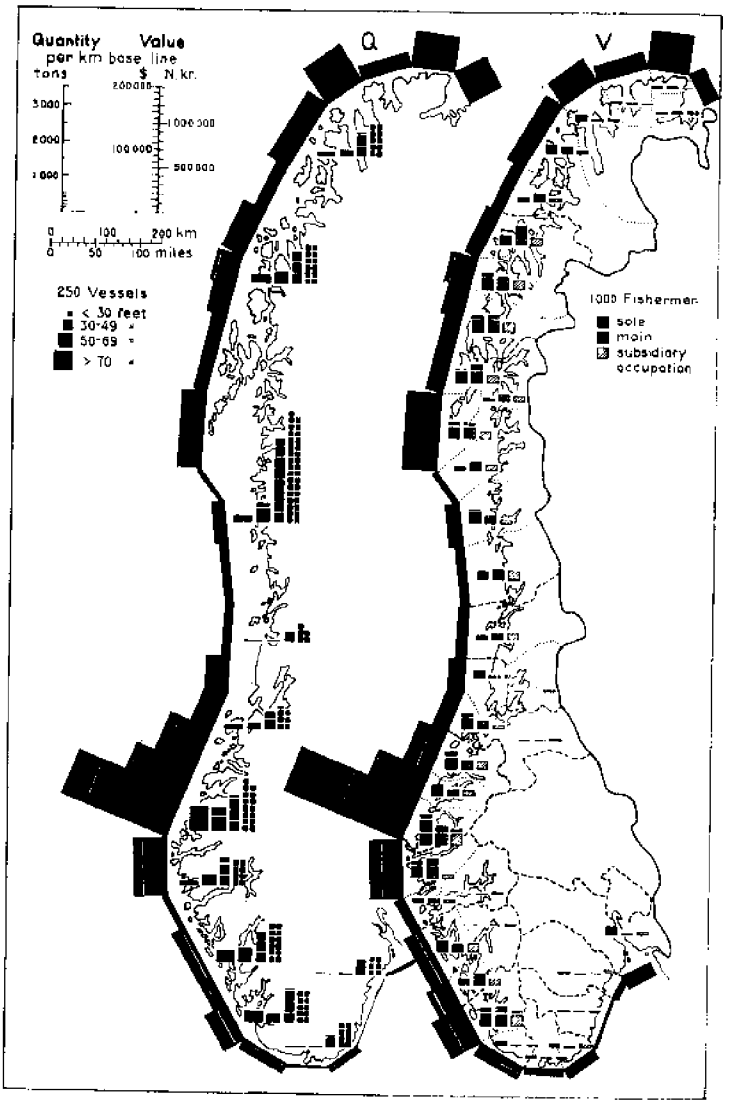
Source: United Nations, Food and Agriculture Organization, Yearbook of Fishery Statistics, 1950-1951, ed. by G. M. Gerhardsen (Rome, 1953), pp. 98, 224, 271.



Fishing of main fish groups. The maps A, B, C show average quantities (live weight) for 1960 per fishery district or group of fishery districts (outer districts together with adjacent inner ones). The districts are numbered on map C. Except for herring, which is partly landed in districts other than those in which it is caught, the maps illustrate the landings in different districts and the 'intensity' of fishing, expressed as quantity per km of the column base-line (scale on lower left). The base-line is the then fishery limit, running 4 nautical miles from the outer skerries, and here slightly modified and simplified. A white line across the black columns marks off the catch taken in 'distant waters', e.g. Shetland, Iceland, West Greenland, Newfoundland. The shaded columns of districts 21 and 22 (C) show quantities of kelp (seaweed) gathered for use in manufacturing. — The diagram on the upper left shows variations in catches during the last decade. The ruled columns on map B and C denote catches of pout and sand eel (8, 10–11) and of capelin (34, 37–38, 40–41), used for the production of meal and oil, or kelp (14, 17, 19–23), collected for industrial production. — Important fishery districts: 11 = Ryfylke, 12 = Sunnhordland, 16–17 = Sogn, 18 = Sunnfjord and Nordfjord, 19 = Sunnmøre, 20 = Romsdal, 21 = Nordmøre, 31 = Lofoten, 32 = Vesterålen, 33–35 = Troms (county), 36–41 = Finnmark (county).

CHART 5.4. Fishing of main fish groups of Norway.

Source: Tore Sund, "Chapter 11: Norway," in A Geography of Norden, ed. by Axel Somme (Svenska Bokforlaget, 1968), p. 253.



Fisheries. Quantities, values, vessels and fishermen. Quantities (map Q) and values (V), average 1960, illustrated as in Fig. 7, with the scale for 'intensity' reduced to facilitate comparison of quantity and value. The national average of the total catch was c. 400 Norw. kr. per ton. In order to show regional differentiation the different prices of different species have been used on the map. The columns for Nord-Norge are thus longer on map V than on map Q. This is also the case with Sørlandet and Østlandet, which have fairly big landings of expensive species such as prawns, mackerel and sprat. The dominant districts of Vestlandet have comparatively low values because of their large proportion of low priced products, e.g. herring and dogfish (district 18) and kelp (21, 22). Capelin accounts for the low value of district 41. — The numbers of fishermen in three different categories in 1956 are given per fishery district (for these see map C on Fig. 7), except for districts 1–5 which have been grouped together. — Fishing as the main and subsidiary occupation is characteristic of Nord-Norge, except in the far north. Numbers of fishing vessels in four different sizes are given per county, except for Sørlandet and Østlandet. The occupation groupings of fishermen correspond well with the types of vessels. The larger the number of fishermen with fishing as their sole occupation, the greater the total of big fishing vessels. Fishery district 19 (Sunnmøre) is the outstanding example of a well equipped fishing area.

CHART 5.5. Fisheries of Norway. Quantities, values, vessels and fishermen.

Source: Tore Sund, "Chapter 11: Norway," in A Geography of Norden, ed. by Axel Somme (Svenska Bokforlaget, 1968), p. 258.

employed in fishing as their sole occupation. Recent figures indicate that presently about forty-five percent of the fishermen depend on fishing as their sole occupation.[124]

The waters off the coast of Norway are rich in phytoplankton and zooplankton which provide food for a multitude of pelagic and demersal fishes.[125] Along the coast there are about seventy species of fish and sea animals that are caught for consumption or sale. However, only a few species are significant in quantity or value.

Herring consists of about half or more of the total catch and as a result is the most important species. Cod, while once a major species, now only provides twelve percent of the total catch. Over-exploitation has resulted in the depletion of the cod stocks.

b. Major Species.--Figure 5.4 shows the distribution of the main groups of fish. Group A includes herring and sprat. Group B includes cod and related species. Group C illustrates other species and Group D includes whaling. These four groups are discussed below.

Group A: Herring

The exploitable herring stock are caught off Iceland and Norway. The herring visit the Norwegian coast to spawn. The herring fisheries on the coast of Vestlandent have declined

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[124] Ibid., p. 257.

[125] Ibid., p. 251.

and the stock is moving north to Nord-Norge.[126] This stock migrates between three different types of water. In the summer, they are found off the coast of Greenland. In the dark period, they live in the cold Artic water. In the end of the dark period, they migrate back through the Gulf Stream to the Norwegian coast.[127]

Norway is the only country that exploits the herring stock in the Norwegian Sea although the Russians send large pelagic fleets into the area. While it has never been shown that the plankton-feeding herring stocks have ever been overfished, this is not the case with some other Norwegian fisheries.[128]

Group B: Cod

Similar to the herring, the Artic cod migrates to Norway to spawn in the Loften Islands and Nord-Norge. While cod fishing was once a major contributor to Norwegian fisheries, it has declined as the result of other nations trawling the area within the last twenty years. The fishing effort has almost tripled during the past two decades. As a result, fishing of young cod has occurred and fecundity has decreased. The Norwegian cod fisheries are concentrated off the coast of the Loften Islands and Finnmark.

Norway also has a fjord cod which is primarily utilized for Norwegian consumption. This stock is stationary in

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[126] Ibid., p. 252.

[127] Ibid.

[128] Ibid.

contrast to the migratory Artic cod.[129]

Group C: Other Species

Other species of fish include the salmon and halibut which are caught in Nord-Norge and Vestlandet and the lobster fishery in southern Norway. Blue mackerel is the most popular of the fatty fishes and is consumed from Stad to Oslo Fjord. Red Fish, another fatty fish, is consumed in Nord-Norge. The Mediterranean tuna is caught in late summer off the coast of Vestlandet and in the southern part of Nord-Norge. Recently there has been a great increase in copelin in Finnmark and sand eel in the North Sea and off Vestlandet. Both of these fishes are used for fish meal.[130]

Group D: Whaling

Whaling was a relatively important industry in the history of Norway. However, it was not concentrated off the Norwegian coast but centered in the Antartic. As a result, this was not a fishery that Norway sought to secure by her fishing boundaries of 1935 and should not have been used as evidence to exemplify long usage.[131]

c. Foreign Exploitation.--In the Fisheries Case Norway never proved that the exploitation by foreign fishermen caused fluctuations in the catch of any stocks since reasons for the fluctuations were not yet established.[132]

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[129] Ibid., p. 256.

[130] Ibid., p. 257.

[131] Ibid., pp. 259-260.

[132] I.C.J., Pleadings, p. 726, (Annex 27).

However, they did show that the stocks were being heavily exploited by local and foreign fishermen.[133]

The following table shows the total catch in metric tons of cod and demersal fishes by Norwegian and foreign fishermen taken from the areas of Barents and Murmon coast, Norwegian coast, Bear Island and Spitzbergen during the period 1935-1938.[134]

	Total Cod		Total Demersal Fishes	
	Norway	Foreign	Norway	Foreign
1935	225	160	332	240
1936	254	261	376	364
1937	321	291	337	431
1938	326	275	434	432

As a result of this heavy exploitation, the actual fish catch by both the Norwegian and foreign fleets increased over the years. This situation prompted Norway to enforce the 1935 Decree in order to protect and conserve her stocks. Consequently, in order to internationally justify the need for the straight baseline system, it is not necessary for a nation to prove that its stocks are being depleted but rather that it presently utilizes the stocks found off its coast.[135]

In addition, the Court was not concerned with the needs of the United Kingdom or her fishing interests in the area[136]

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[133] I.C.J., Pleadings, p. 726 (Annex 25).

[134] Ibid.

[135] Lewis M. Alexander, The Law of the Sea, Offshore Boundaries and Zones (Ohio State University Press, 1967), pp. 19-20.

[136] Johnson, "The Anglo-Norwegian Fisheries Case," p. 375.

although the English had fished the northern Norwegian coast from 1900 to the time of dispute.[137] This fishing was economically important to the English inhabitants. In fact, in 1949 they made 560 trips to the Norwegian coast. These trips were an expenditure of 283,000 men days (average crew being 21 men and average voyage 24 days).[138] In 1938 of the total of 420,000 tons of fish taken in the area, only 79,000 tons were caught by the Norwegians, against 244,000 tons by the British and 97,000 tons by the Germans. In 1951 the Norwegians caught 99,000 tons, the British caught 292,000 tons and the Germans caught 39,000 tons.[139] The Court did not acknowledge the importance of these factors. As a result, it seems reasonable to conclude that another nation in a similar situation will not be prevented from drawing an exclusive fishery zone by the straight baseline system because other nations are heavily exploiting its coastal waters.

d. The Court's Emphasis on Economics.--When reviewing the economics of the case, the Court initially made a general reference to these factors and subsequently made two specific references. The general reference appears in the Court's descriptive passage:

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[137]R. O. Wilberforce, "Some Aspects of the Anglo-Norwegian Fisheries Case," Transactions for the Year 1952: Problems of Public and Private International Law, Vol. 38, The Grotius Society (Great Britain: Clevedow Printing Co., Ltd., 1953), p. 152.

[138]I.C.J., Pleadings, p. 309 (Annex 27).

[139]Douglas M. Johnston, The International Law of Fisheries, (New Haven and London: Yale University Press, 1965), p. 179.

> "In these barren regions the inhabitants of the coastal zone derive their livelihood essentially from fishing. Such realities must be borne in mind when appraising the Norwegian fisheries zone laid down in the 1935 decree."[140]

When applying the economic factor in the two specific instances, the Court connected it with an historic factor. The first pertains to particular lines[141] and states:

> "Finally, there is one consideration not to be overlooked[142] the scope of which extends beyond the purely geographical factors: that of certain economic interests peculiar to a region, the reality and importance of which are evidenced by long usage."[143]

The second specific reference to economics concerned the 48-nautical mile baseline across Lopphavet Basin and again the Court connected economics with historics and stated:

> "Such rights founded on the vital needs of the population and attested by very ancient and peaceful usage may legitimately be taken into account in drawing a line which, moreover, appears to the Court to have been kept within bounds of what is moderate and reasonable."[144]

These references indicate that economics can justify a particular line but no inference is made that economics may be considered to justify a situation which does not qualify geographically.

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[140] I.C.J., Reports, p. 128.

[141] Fitzmaurice, "The Law and Procedure of the International Court of Justice," p. 401.

[142] Which means that economics should not be overlooked when drawing a particular baseline not for claiming the system of straight baselines in general.

[143] I.C.J., Reports, p. 133.

[144] Ibid., p. 142.

3. Historics

In the pleadings, Norway relied heavily on her historic claims and the greater portion of material filed by Norway was in support of these claims. These prescriptive claims were twofold. First, she claimed exclusive fisheries in the waters. Secondly, she claimed that she had developed a system of delimitation over the past 120 years.[145]

a. The Court's Emphasis on Historics.--In its opinion the Court discussed Norway's historic rights to the straight baseline system in general and then applied the historics as a basis for drawing particular lines. In reviewing the historics of the system, the Court related that the Norwegian Government relies on "Historic Title" to justify her application of the general law "but not to justify the application of exception rights to claim areas of the sea which the general law would deny."[146] The history of Norwegian fisheries was then reviewed for about six pages in the Court's opinion[147] with the following concluding statement:

> "In the light of these considerations, and in the absence of convincing evidence to the contrary, the Court is bound to hold that Norwegian authorities applied their system of delimitation consistently and uninterruptedly from 1869 until the time when the dispute arose."148

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[145]Wilberforce, "Some Aspects of the Anglo-Norwegian Fisheries Case," p. 164.

[146]I.C.J., Reports, p. 133.

[147]Whiteman, Digest of International Law, p. 159.

[148]I.C.J., Reports, p. 138.

The Court then noted that the United Kingdom did not file a formal protest until 1933 and stated:

> "The Court notes that in respect to a situation that could only be strengthened by the passage of time, the United Kingdom Government refrained from formulating reservations."149

The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the dispute, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom. This was stated in the Court's opinion as follows:

> "The Court is thus led to conclude that the method of straight baselines, established in the Norwegian system, was imposed by the peculiar geography of the Norwegian coast; that even before the dispute arose, this method had been consolidated by a constant and sufficiently long practice, in the face of which the attitudes of governments bears witness to the fact that they did not consider it to be contrary to international law."150

When reviewing particular baselines, the Court considered historics in support of the disputed baseline drawn across Lopphavet Basin. The Court concluded that this line followed the general direction of the coast; but even if it didn't, the Court added that "The Norwegian Government has relied on an historic title clearly referrable to the waters of Lopphavet,"[151] namely, the exclusive privilege to fish and hunt whales granted at the end of the 17th century.[152]

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[149] I.C.J., Reports, p. 139.

[150] Ibid.

[151] Ibid., p. 142.

[152] Ibid.

This historical data produced by the Norwegian government in support of this contention appears to have lent some weight to the idea of survival of traditional rights reserved to the inhabitants of the Norwegian Kingdom over fishing grounds included in the 1935 delimitation, particularly in the case of Lopphavet Basin. Such rights, founded on the vital needs of the population and attested by very ancient and peaceful usage, may legitimately be taken into account in drawing a line which moreover appeared to the Court to have been kept within the bounds of what is moderate and reasonable.[153]

In order to fully evaluate the emphasis the Court placed on historics, it is helpful to look at the actual history of Norway's system and her exclusive fishing in the area of Lopphavet Basin, where historics lent some weight to the drawing of that particular line.

b. Historics of Norway.--Norway was ruled by the Danes from 1450 to 1814 and united with Sweden from 1814 to 1905 under the Swedish monarchy. The Kingdom of Norway was established in 1905.[154]

Between the years 1583 to 1602, England protested to Norway and Denmark's exclusive pretensions to exclusive sovereignty to the North Sea. These disputes were won by England under the principle of freedom of the seas. Then James I of England agreed with Christian IV of Sweden to

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[153] Ibid.

[154] Smith, "The Anglo-Norwegian Fisheries Case," p. 286.

refrain from fishing whales and other species off the coast of Norway. However, there was never any evidence produced concerning confirmation of this agreement. Subsequently, the fisheries of Great Britain deteriorated and weren't revived until the 20th century.[155]

In 1691 and in 1745 royal rescripts were issued declaring that no prizes were to be taken off the Norwegian coast within the range of vision from shore, which was established to be one league. However, it was not evident whether this league was to be measured from the mainland or from islands and rocks. In 1812 when a prize was captured by another nation within a league from a rock, a decree was issued proclaiming that the league was to be measured from the outermost islands and rocks but this was considered only as a neutrality limit.[156] It wasn't until 1830, through creeping jurisdiction, that the area covered by the 1812 decree was in actuality considered Norway's maritime limits.[157]

The Norwegian straight baseline method is not a direct predecessor of the 1812 decree since, at that time, measurements under Norwegian law were gauged with vision and not imaginary straight baselines. The relevant laws leading to the straight baseline system were the decrees of 1869 and 1889 which related to an area approximately 300 miles south of the area disputed in the 1935 decree. This area covered about

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[155]Waldock, "The Anglo-Norwegian Fisheries Case," p. 117.

[156]Ibid., p. 118.

[157]Ibid., p. 119.

80 miles of the Norwegian coast and was not disputed internationally. A similar line closed Varanger fjord by the whaling laws of 1881-1890.[158]

In 1906 British trawlers began to exploit the waters off the coast of Norway. As a result, in 1911 a Norwegian commission was established to investigate the problem. This commission formulated a report which initiated the system of straight baselines, subsequently adopted in the 1935 Decree. However, these lines were not formally published until the 1935 Decree was issued. They were kept secret and only used for local interests until 1935.[159]

In 1924 after many British vessels had been arrested in Norwegian waters and because the Germans also began to fish in the disputed area, Norway and Britain met in Oslo to discuss the problem. At this conference the Norwegian representative did not refer to the 1911 lines which denoted the exclusive fishing zone but drew red lines that were considerably closer to land than those later denoted in the 1935 Decree. For example see Chart 5.6. Until 1935 the Norwegians used these red lines as the outer limits of their exclusive fishing zone.[160] Before 1935 the elements for an international historic claim were absent; that is, the assertion of the claim and the acquiescence of other nations in the claim were not present.

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[158] Ibid.

[159] Wilberforce, "Some Aspects of the Anglo-Norwegian Fisheries Case," p. 154.

[160] Waldock, "The Anglo-Norwegian Fisheries Case," p. 121.

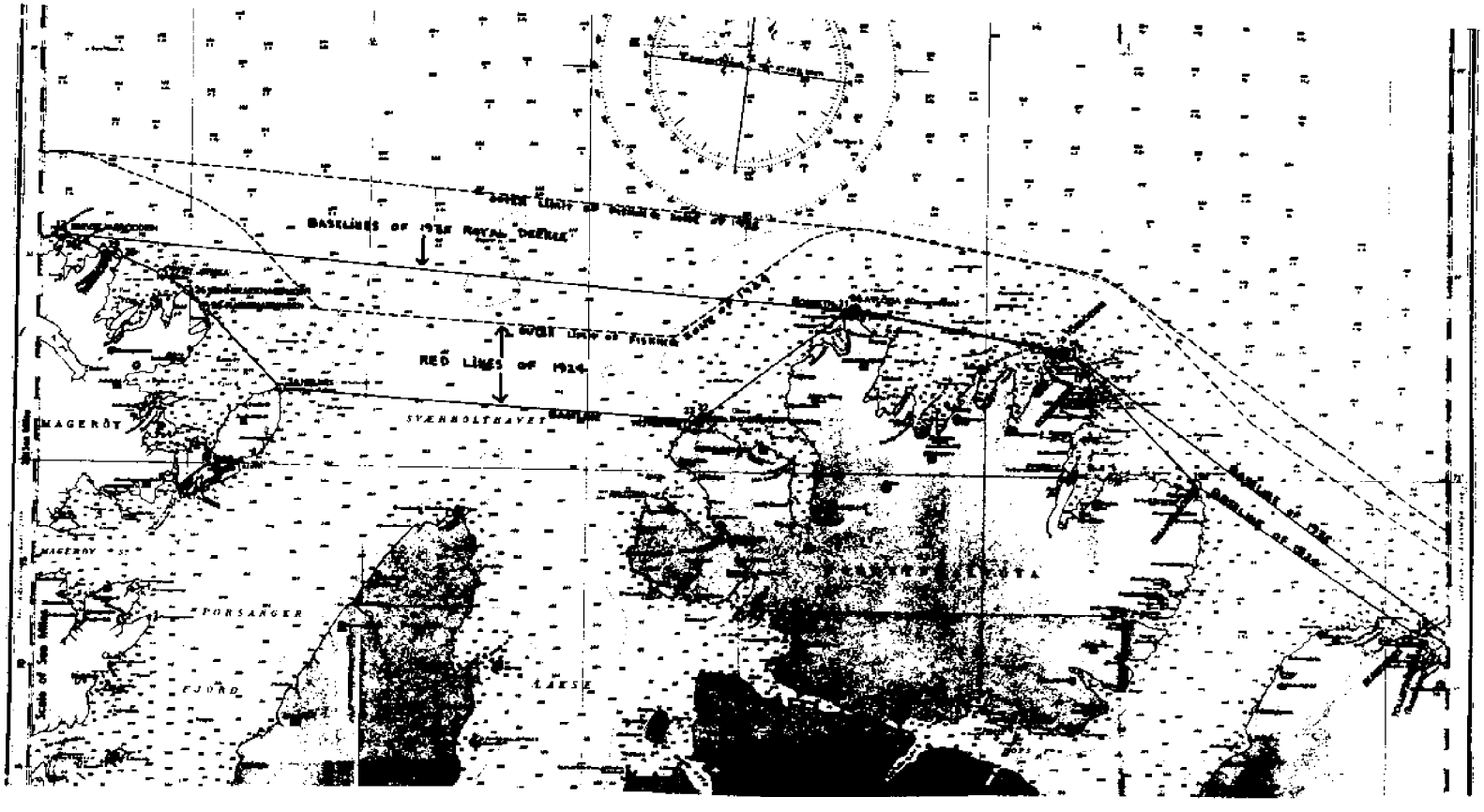

CHART 5.6. An example illustrating the difference between the area delimited by the 1924 red lines (lines on chart nearest mainland) and the area covered by the 1935 Royal Decree (furthest lines from mainland on chart).

Source: London, England, Published at the Admiralty (February 8, 1928).

The historic requirements for drawing particular deviating baselines under a straight baseline system are minimal. It was mentioned in the Court's opinion that historics could lend some weight if the baselines in the case of Lopphavet Basin weren't following the general direction of the coast.[161] The historics in this area referred to the long usage in order to establish the economic criterion. However, the supporting evidence was very weak since the English proved that there could hardly be any historical rights in the area since the fishing banks were too far from shore to have been used historically as a fishing ground.[162] Long usage merely confirms that the limits claimed by a coastal state correspond to its legitimate interests.[163]

E. Summary

As set forth in the Anglo-Norwegian Fisheries Case, the purpose of the straight baseline system was for the establishment of an exclusive fishery zone.

Geographics, both under the Fisheries Case and under Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, is the most important criterion to be met before a country can have an internationally acceptable claim for the use of straight baselines. In order to qualify the straight baseline system geographically, it is necessary

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[161] I.C.J., Reports, p. 142.

[162] Wilberforce, "Some Aspects of the Anglo-Norwegian Fisheries Case," p. 167.

[163] Waldock, "The Anglo-Norwegian Fisheries Case," p. 161.

to consider the coast as a whole. The most concrete method for deciding whether a coast qualifies for the straight baseline method is to compare it with the Norwegian coast.[164] Once the claim for the coast as a whole meets the qualifications to be internationally acceptable, certain rules should be followed to draw particular lines. In order to test whether particular lines are to be geographically considered acceptable in the international arena, it is necessary to regard the vague criteria discussed in this Chapter in conjunction with the baselines across Lopphavet Basin in the Fisheries Case. These terms are to be construed liberally and in favor of the coastal state.[165]

In order for a nation to use economics as a criterion for drawing particular lines, it is not necessary to prove that its fisheries are being exploited to a point below the maximum sustainable yield. However, the country will have to show that it is dependent on its stocks and also that other nations are exploiting them. It is not significant to the issue that foreign fisheries are also dependent on the stocks of the area.

In the future the economics will be relied on to a greater extent in liberalizing the geographic factors.[166] It is interesting to note that since the end of the 1960 Conference

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[164]A. L. Shalowitz, Shore and Sea Boundaries, Vol. 1 (Washington, D.C.: Government Printing Office, 1962), pp. 209-217.

[165]I.C.J., Reports, p. 143.

[166]O'Connell, International Law, p. 479.

on the Law of the Sea, the trend of most fishing nations throughout the world has been to extend jurisdiction of unshared fishery zones rather than to extend their territorial sea.[167] As a result, it is strongly advisable for a nation to have a sound economical claim when promulgating the straight baseline system off its coast.

Norway's historic claim for the system as a whole should not have been internationally acceptable. It would be contrary to customary international law that one nation should be deprived of access to a portion of the ocean for fishery purposes in which freedom to fish is a traditional right on the grounds that another country has historically claimed a different area under a particular system. Straight baselines, as mentioned previously, are internationally acceptable claims in certain areas on other grounds. In view of these factors, it is not necessary for a nation to have an historical claim to the straight baseline system. However, historics may be regarded in conjunction with economics to lend weight for drawing baselines that deviate from the general direction of the coast.

In summary, the following are guidelines to be used for the implementation of the straight baseline system:

1. The purpose may be for the establishment of an exclusive fishery zone.

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[167]Fitzmaurice, "The Law and Procedure of the International Court of Justice," p. 245.

2. The major criterion for establishing baselines is geographics.

3. The baselines shall follow the general direction of the coast.

4. Straight baselines follow the general direction of the coast if they don't distort the general outline of the coast.[168]

5. Economics attested by historics may be considered to support particular baselines that deviate from the general direction of the coast.

6. The lengths of the baselines are not restricted.

7. When incorporating the straight baseline system and when drawing the particular baselines, Norway is a positive example of a coastline that permits the utilization of the straight baseline system. A comparison to this coast and to the Norwegian system is very useful to other states in the establishment of the system and for drawing particular baselines.

8. Regular portions of an irregular coast do not require the application of a normal baseline system instead of the straight baseline system.

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[168]Kirk W. Stanley, Proposed Sea Boundary for Alaska (Printed courtesy of the National Bank of Alaska, 1970), p. 18.

CHAPTER VI

APPLICATION OF AN EXCLUSIVE FISHERY ZONE FOR ALASKA

To support Alaska's claim for the fishery baseline system, as mentioned, it is advantageous to first qualify her under certain criteria of the straight baseline system. The following is a discussion of Alaska's geographic, economic and historic claims as prescribed by Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone.

A. Geographics

1. Comparison to the Norwegian Coast.--In general, shorelines may be classified into four major types:

a. Shorelines of submergence which evolve from the surface of water rubbing against a partially submerged land area. There are two types of submerged shorelines: ria shorelines which are formed by the partial submergence of a stream-dissected land area with a drawing of the river valleys and fjord shorelines which are formed by the partial submergence of an area of glacial valleys or troughs (see Figure 6.1);

b. Shorelines of emergence where the water surface rubs against a partially submerged sea or lake floor;

c. Neutral shorelines whose features are neither submergence of a former land area or emergence of a former underwater surface. These include delta or alluival plan shorelines, volcano shorelines and coral reef shorelines;

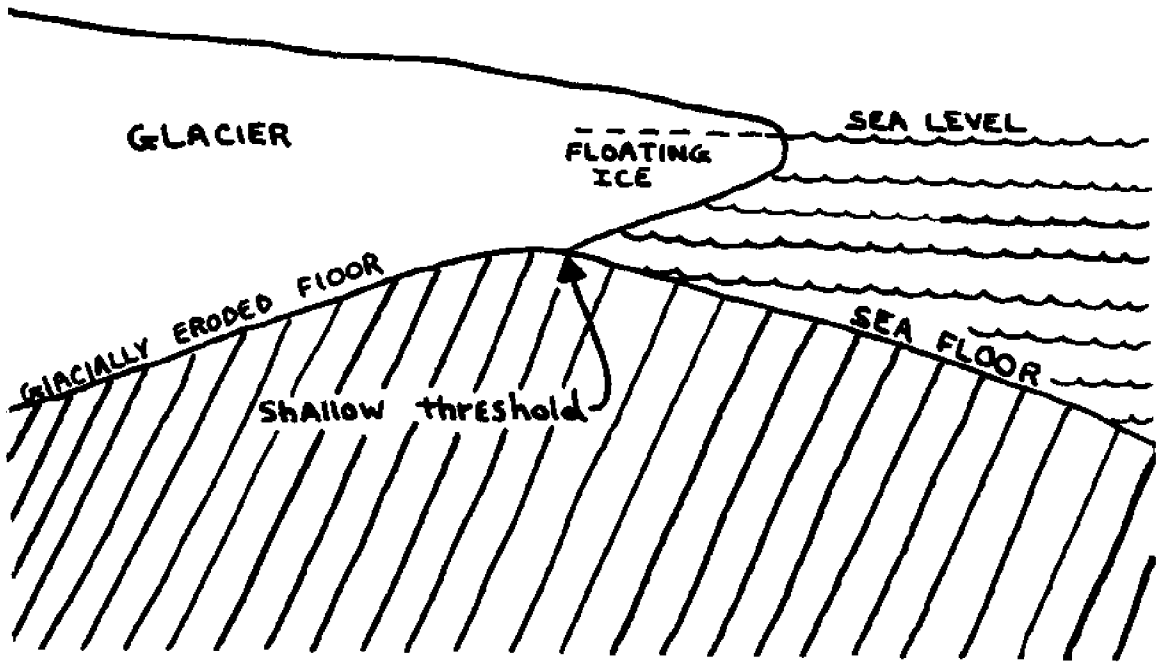

FIGURE 6.1. Example of a fjord created by glaciation.

Source: Reproduced from Glaciers and Glaciation, by Roy Gresswell (London: Hulton Educational Publication, 1967), p. 64.

4. Compound shorelines which are made up of two or more types of shorelines.[169]

The coast of Alaska (see Chart 6.2) and the Norwegian coast are typical examples of fjord shorelines of submergence. Their shorelines are shallower at their mouths than further inland and the depths vary with the size of their glaciers. All fjords have irregular floors and shallow thresholds.[170] These deep water narrow arms of the sea with massive walls are exhibited on grand scales on the coast of Norway and Alaska. The fjords often range from 10 to 75 miles in length and several thousand feet deep.[171]

Similar to Norway, the coast of Alaska is deeply indented, cut into and fringed by islands located in its immediate vicinity. See Chart 6.3. These geographical factors were mentioned in the dissenting opinion of Judge Read in the Anglo-Norwegian Fisheries Case when he stated:

> "There are coastal archipelagoes, deeply indented bays and broken coastlines on the north, south, east and west coasts of Canada and in the panhandle of Alaska."172

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[169]William J. Miller, Introduction of Physical Geology, (New York: Van Nostrand Co., Inc., 1946), pp. 304-305.

[170]Roy Gresswell, Glaciers and Glaciation (London: Hulton Educational Publications, 1967), pp. 64-65.

[171]Miller, Introduction of Physical Geology, p. 258.

[172]I.C.J., Reports, p. 193.

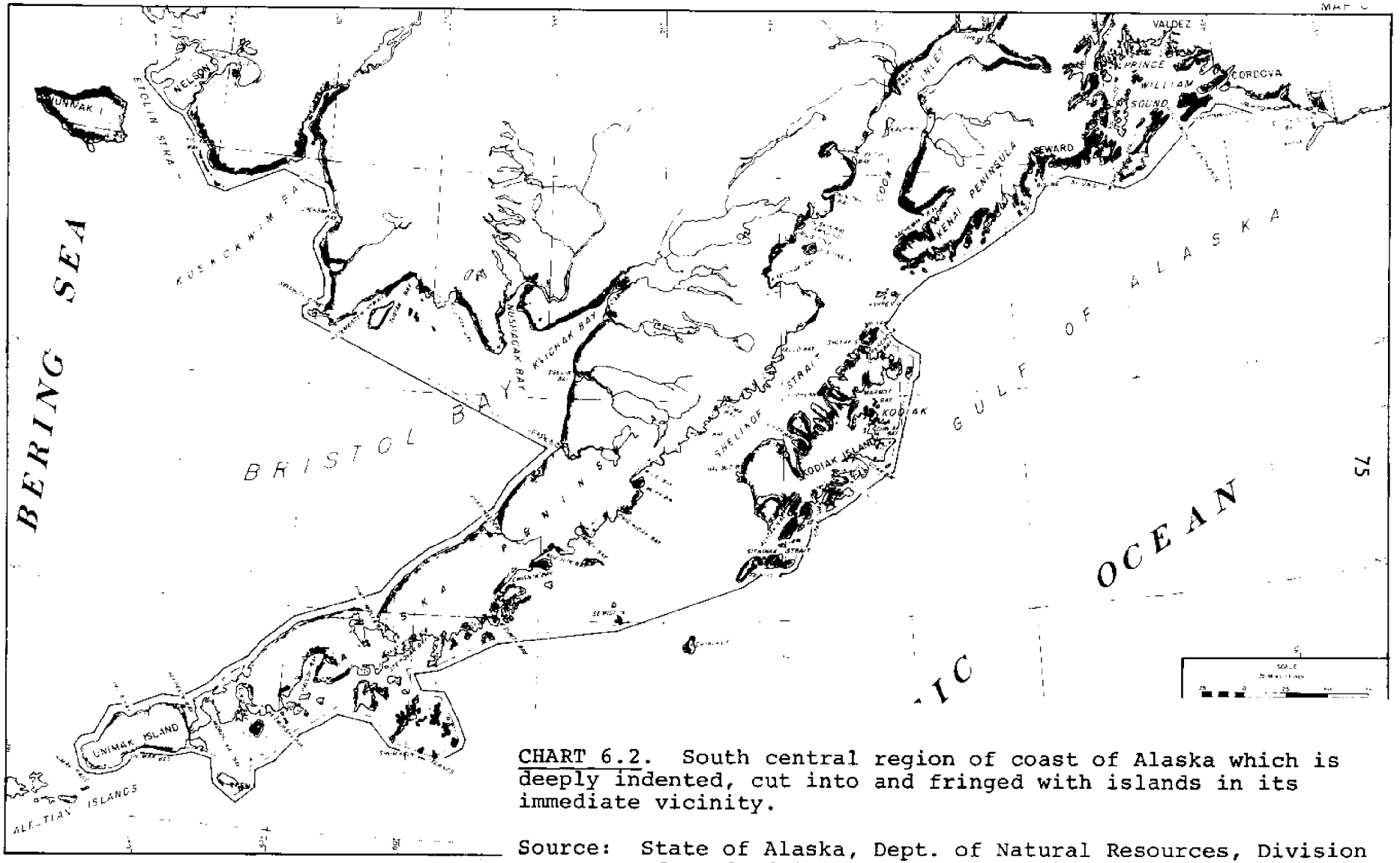

CHART 6.2. South central region of coast of Alaska which is deeply indented, cut into and fringed with islands in its immediate vicinity.

Source: State of Alaska, Dept. of Natural Resources, Division of Lands (File No. 57-94).

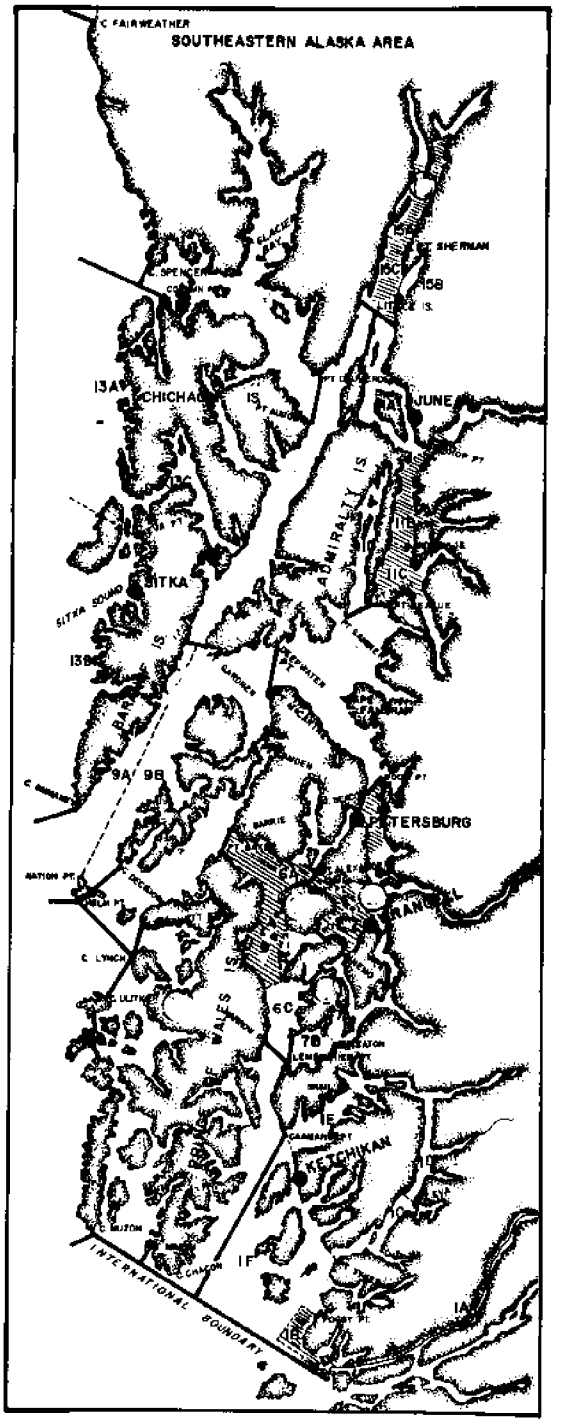

CHART 6.3. Southeastern portion of coast of Alaska illustrating island fringe.

Source: State of Alaska, Department of Fish and Game, Alaska Commercial Fishing Regulations, 1970, front insert.

Many international writers[173,174,175,176,177] also compare the coast of Alaska with the Norwegian coast. Getzel Pearcy, in a Department of State Bulletin, said that the coast of Norway and the archipelago along the southeast coast of Alaska are clear-cut examples of areas covered by Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone.[178] Sir Gerald Fitzmaurice considres the area northward from Vancouver Island, Canada, as being similar to the Norwegian coast.[179] Marjorie Whiteman relates that:

> "Many of the world's coastlines are highly sinuous, jagged with indentations and fringed with islands and islets. Probably the three best examples are the fjored coasts of Norway, the southeast coast of Alaska and the southern coast of Chile."180

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[173]Fitzmaurice, "The Law and Procedure of the International Court of Justice," p. 391.

[174]D. H. N. Johnson, "The Anglo-Norwegian Fisheries Case," p. 179.

[175]McDougal and Burke, The Public Order of the Oceans, p. 398.

[176]Whiteman, Digest of International Law, p. 171; see also p. 150.

[177]Getzel Pearcy, "Measurement of the United States Territorial Sea," The Geographer, reprint from the Department of State Bulletin, June 29, 1959, Department of State Publication 6879, General Foreign Policy Series 139, Bureau of Public Affairs (Washington, D.C.: Government Printing Office, 1959).

[178]Ibid.

[179]Fitzmaurice, "Some Results of the Geneva Conference."

[180]Whiteman, Digest of International Law, p. 171.

Many other individuals working in geography and related fields also express similar comparisons. James C. Tison, Director of the Coast and Geodetic Survey, states that Alaska's coast is vastly more intricate than California's and that it is the very type envisioned in Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone.[181] Robert L. Hartig, the Assistant Attorney General and Chief of the Civil Division and Natural Resources Section of Alaska, also feels that the coastline of Alaska is very similar to the Norwegian coast and should be qualified for use of the straight baseline method.[182]

2. Geographics of Alaska.--The following is a regional description of the Alaskan coast.

a. Southeast Alaska (see Chart 6.4).--This region includes the area from Cape Muzon to Yakutat Bay. Cape Muzon is the southernmost point on the coastal boundary of Alaska and British Columbia. Cross Sound is the northernmost inlet connecting the inland passages of southeast Alaska.[183] The greater majority of the islands in this area are mountainous, rough and broken. The coast contains steep

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[181]Rear Admiral James C. Tison, Jr., USE SSA, "Sea Baoundaries and Nautical Charts," Paper presented before the Second Alaska Surveying and Mapping Convention held in Anchorage, Alaska, Feb. 15-17, 1967, p. 11.

[182]Hartig, "Applying the Straight Baseline Concept."

[183]U.S. Department of Commerce, Pacific Coast of Alaska, Dixon Entrance to Cape Spencer, 12th edition (Washington, D.C.: Government Printing Office, 1969), p. 20.

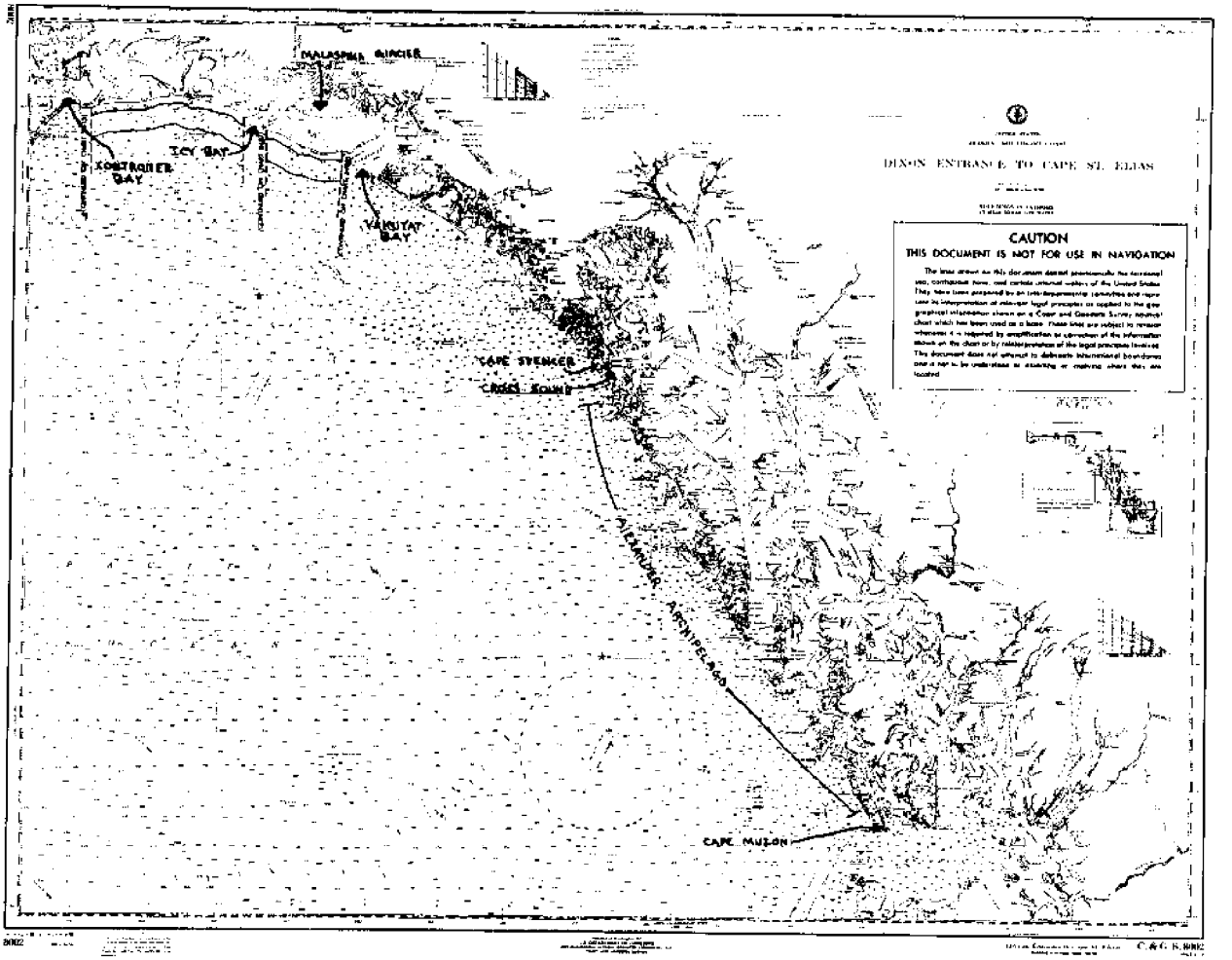

CHART 6.4. Southeast Region of Alaska (Cape Muzon to Yakutat Bay).

Source: U.S. Dept. of Commerce, Environmental Science Services Administration, Coast and Geodetic Survey (C.&G.S. Chart No. 8002).

inclines and narrow fjords which continue below sea level forming a system of deep water straits extending from Cape Muzon to Cape Spencer. The coastline is fringed by the Alexander Archipelago which is typical of a fjord coast being deeply indented and cut into.[184] The area is described by geologist for the U. S. Geological Survey as:

> "The magnificant fjords, equivalent in origin and scenic character to the famous fjords of Norway, penetrate into the granite heart of the coast range"185

b. South Central Alaska (see Chart 6.4 and 6.5).--

This area is bound on the south by the Malaspina Glacier. The area includes Prince William Sound, the Kenai Peninsula, Cook Inlet and portions of the Gulf of Alaska. It is bounded on the east by the 141st meridian and on the west and north by the summit of the Alaskan range. From Icy Bay to Controller Bay, the coast is regular. Controller Bay is fringed by coastal islands and spits.[186] From Cape Spencer in southeastern Alaska to Cook Inlet are many glaciers with terminal moraines, the most prominent of which are Yukatat 25 miles eastward of the Yukatat Bay and the Malaspina Glacier westward of the Yukatat Bay. The area as a whole is highly indented,

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[184]Stanley, Proposed Sea Boundary for Alaska, p. 21.

[185]A. F. Buddington and T. Chopin, Geology and Mineral Resources of Southeast Alaska, USGS Bulletin 800 (Washington, D.C.: Government Printing Office, 1929), p. 22.

[186]John T. Teal, Geography of the Northlands (New York: John Wiley & Sons, Inc.), p. 292.

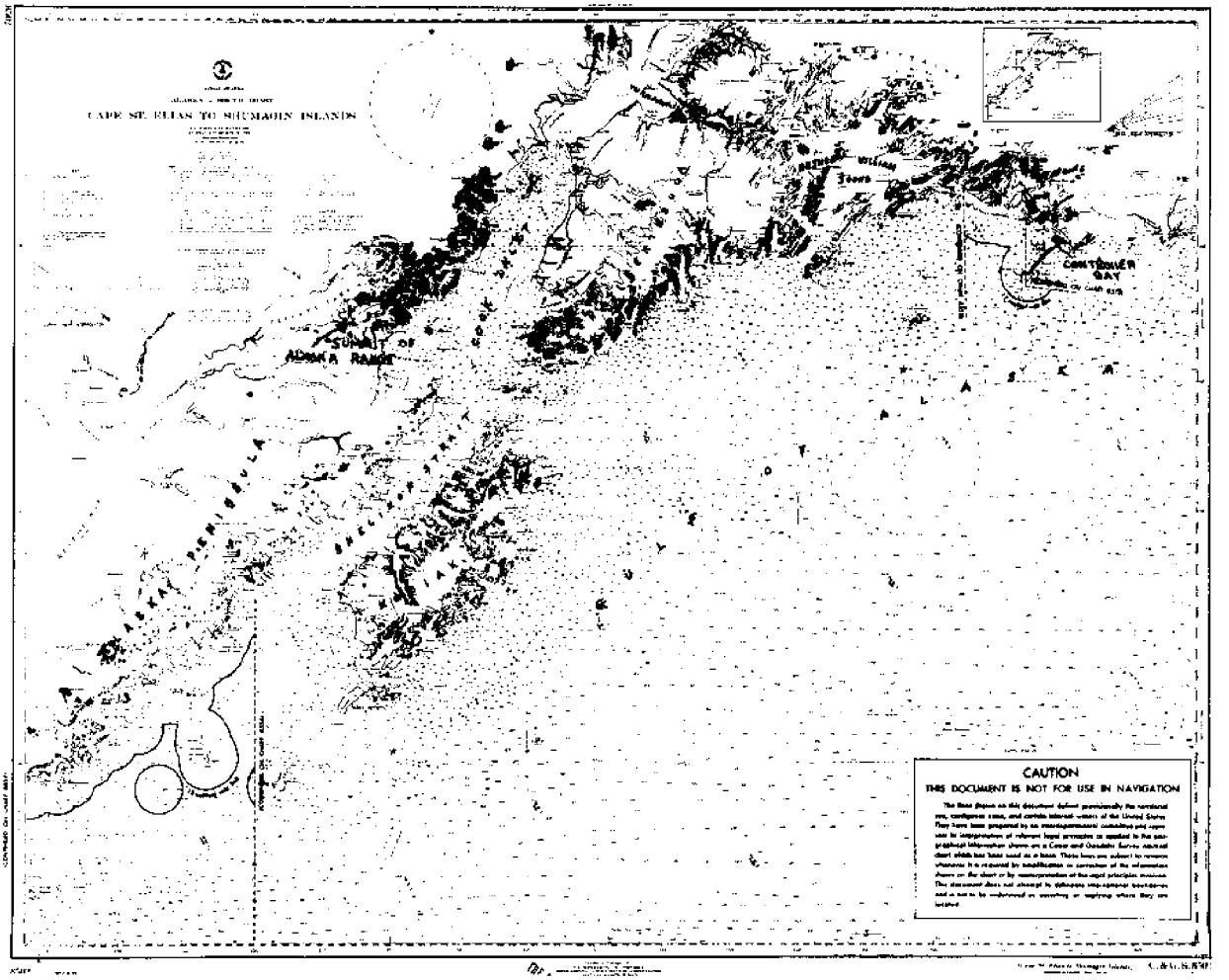

CHART 6.5. South Central Region of Alaska (Malaspina Glacier to summit of Alaska Range).

Source: U.S. Dept. of Commerce, Environmental Science Services Administration, Coast and Geodetic Survey (C.&G.S. Chart No. 8502).

fringed by islands, rocks and reefs and resembles the coastline of Norway.[187] Prince William Sound is blocked from the sea by a belt of islands and is inundated by numerous fjords and glaciers.[188] U. S. Grant, a geologist for the United States Geological Survey describes the coastline of Prince William Sound as follows:

> "Prince William Sound is not a sound according to the customary usage of that term, but is an extensive bay or gulf which includes many islands. The coast line is indented by numerous long, narrow inlets or fjords and by other less regular embayments whose shores are commonly of great irregularity."189

The coast of the Kenai Peninsula is described as follows:

> "The two geographic subdivisions of Kenai Peninsula present two distinct types of shoreline. The shore of the Kenai mountains is intricately embayed and exhibits features that would be expected on a deeply drowned coast where the rocks are resistant and have been greatly eroded by glaciers of the Alpine type."190

The major area of this region which is of great concern to the State of Alaska as far as fisheries are concerned is Cook Inlet.[191] (See Chart 6.6.) Cook Inlet extends 150 miles

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[187]Stanley, Proposed Sea Boundary for Alaska, p. 25.

[188]Teal, Geography of the Northlands, p. 296.

[189]U. S. Grant and D. F. Higgins, Reconnaissance of the Geology and Mineral Resources of Prince William Sound, Alaska, USGS Bulletin 443 (Washington, D.C.: Government Printing Office, 1934), p. 114.

[190]G. C. Martin and B.L. Johnson, Geology and Mineral Resources of the Kenai Peninsula, Alaska, USGS Bulletin 587, (Washington, D.C.: Government Printing Office, 1915), p. 23.

[191]Robert L. Hartig, Assistant Attorney General and Chief of Natural Resources, Alaska, Personal letter, Feb. 25, 1971.

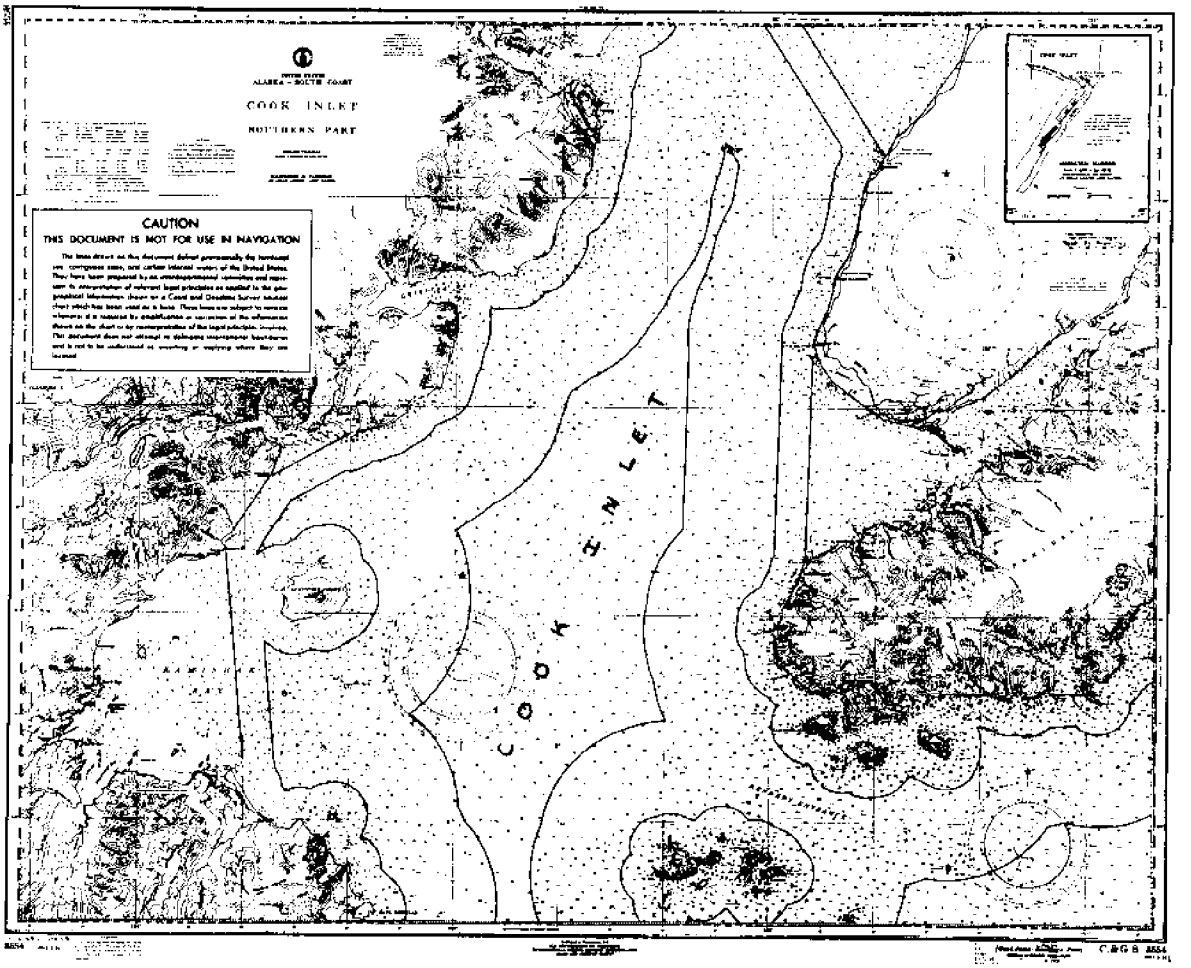

CHART 6.6. Cook Inlet (under the present tentative exclusive fishing zones delineated by the arc of circles method).

Source: U.S. Dept. of Commerce, Environmental Science Services Administration, Coast and Geodetic Survey (C.&G.S. Chart No. 8554).

northeasterly from the Gulf of Alaska and then bends due east into the narrow, rocky Turnagain Arm.[192]

c. Southwestern Alaska (See Charts 6.5 and 6.7).--

This region runs from Kodiak Island to Bechevin Bay and includes the Alaska Peninsula and the Aleutians. As a whole it is a rugged area formed by the volcanic continuation of the Alaska Range. The area is submerged in part to within a hundred miles of the Kuriles. This area is deeply indented by fjords and fringed by thousands of offshore islands.[193] In this region, Shelikof Strait is of significance to the State of Alaska as far as fisheries are concerned.[194] (See Chart 6.8).

Kodiak Island and Afognak Island are large islands with numerous small islands along their shores. This coastline was described by S. R. Capps, a U. S. Geological Surveyor, as an intricate shoreline "with its numerous deep bays, and the separation of the land mass into a great number of islands are the result of severe glacier erosion during the Ice Age, and the long narrow bays and most of the narrow channels that separate the islands from one another are glacial fjords."[195]

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[192]Teal, Geography of the Northlands, p. 296.

[193]S. R. Capps, Kodiak and Adjacent Islands, Alaska, USGS Bulletin 880-C (Washington, D.C.: Government Printing Office, 1915), p. 23.

[194]Hartig, Personal letter.

[195]Capps, Kodiak and Adjacent Islands, p. 23.

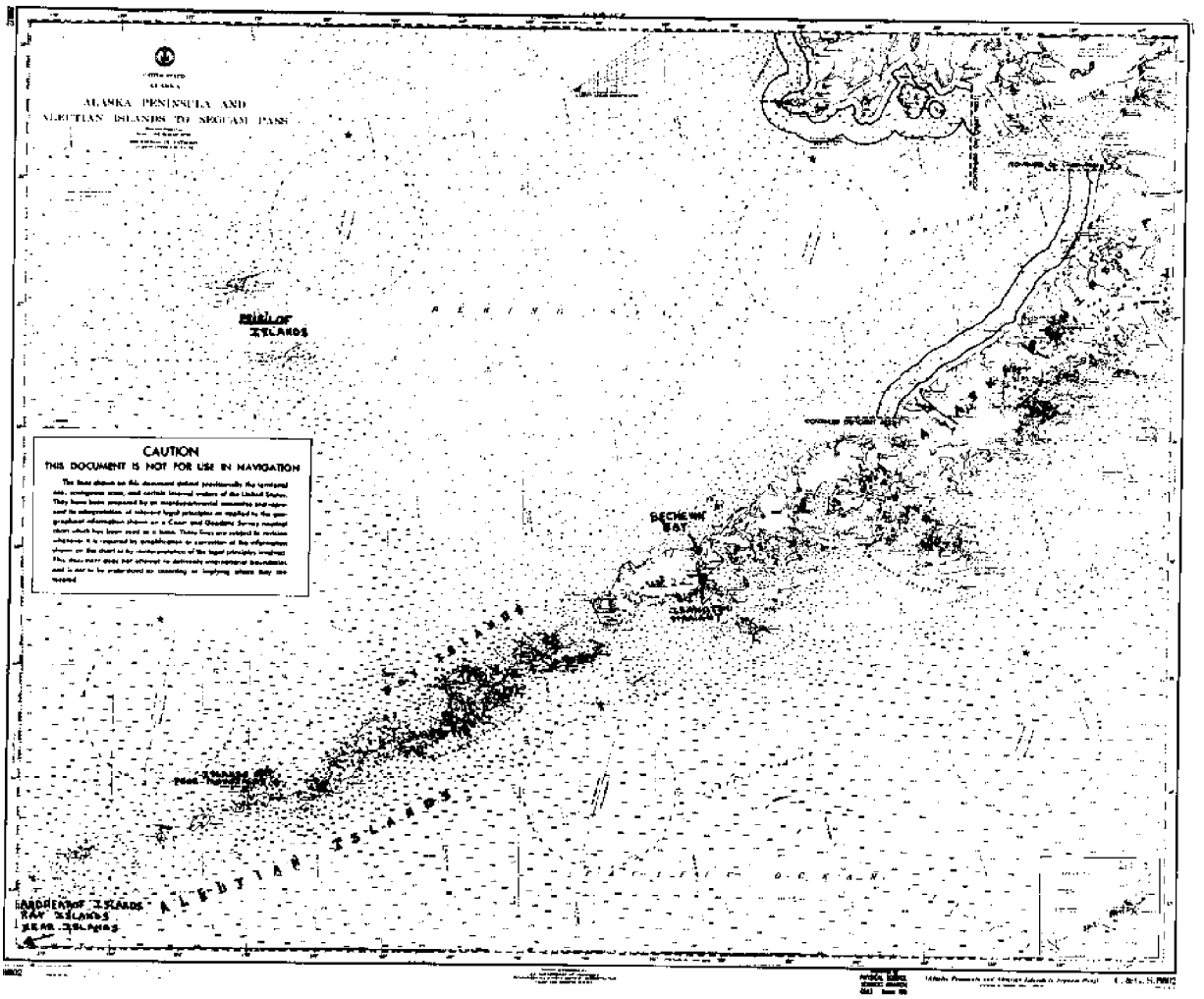

CHART 6.7. Southwestern Region of Alaska (Kodiak Island to Bechevin Bay).

Source: U.S. Dept. of Commerce, Environmental Science Services Administration, Coast and Geodetic Survey (C.&G.S. Chart No. 8802).

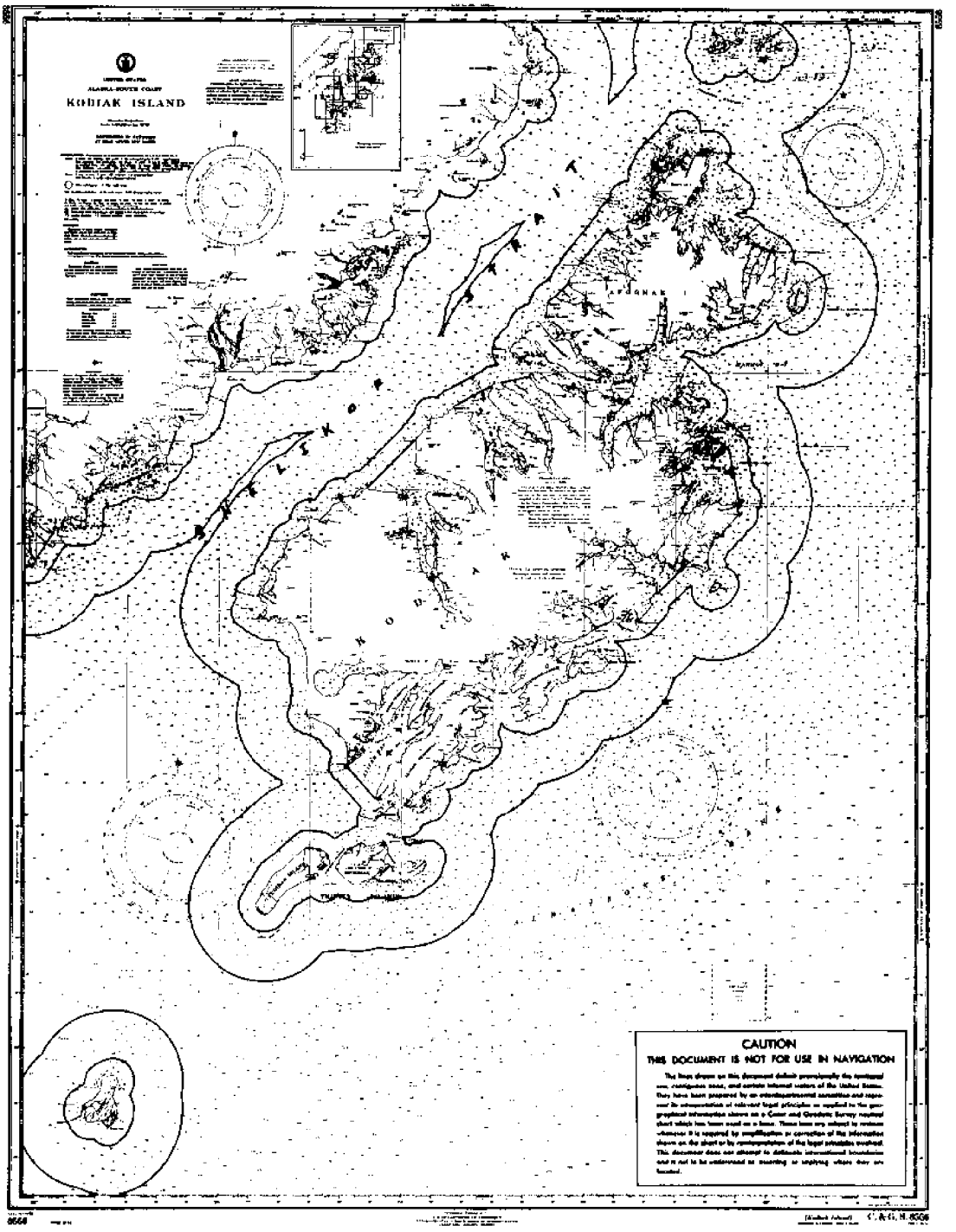

CHART 6.8. Shelikof Strait (under the present tentative exclusive fishing zones delineated by the arc of circles method).

Source: U.S. Dept. of Commerce, Environmental Science Services Administration, Coast and Geodetic Survey (C.&G.S. Chart No. 8556).

The Alaska Peninsula runs southwestward over 400 miles from the Alaska mainland to Isanotski Strait. The south coast of the Peninsula is irregular and broken by numerous indentations with thousands of offshore islands.[196]

The Aleutian Islands are divided into five main groups: the Fox Islands, the Islands of Four Mountains, the Andreanof Islands, the Rat Islands and the Near Islands. The Pribilof are also considered part of the chain.[197]

The Aleutians were the result of volcanic eruption and glaciation and as a result are highly irregular. There are many offlying islets, rocks and reefs. The sea bottom features are similar to the adjacent land.[198]

d. Western Alaska (See Chart 6.9).--This area extends from Bristol Bay along the coast of Alaska to Seward Peninsula (Cape Prince of Wales). It includes the islands of Nunivak, St. Matthew, St. Lawrence and the Diomede Islands. The coastal features of this area, viewed as a whole, are irregular. However, many of the coastal areas when considered locally are very uniform. In many parts of this region, there are many scattered offshore islands.[199]

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[196]U. S. Dept. of Commerce, Coast and Geodetic Survey, Pacific and Artic Coasts, Alaska: Cape Spencer to Beaufort Sea, 7th edition (Washington, D.C.: Government Printing Office, 1964), p. 123.

[197]Teal, Geography of the Northlands, p. 298.

[198]U. S. Dept. of Commerce, Pacific and Artic Coasts, p. 165.

[199]Stanley, Proposed Sea Boundary for Alaska, p. 33.

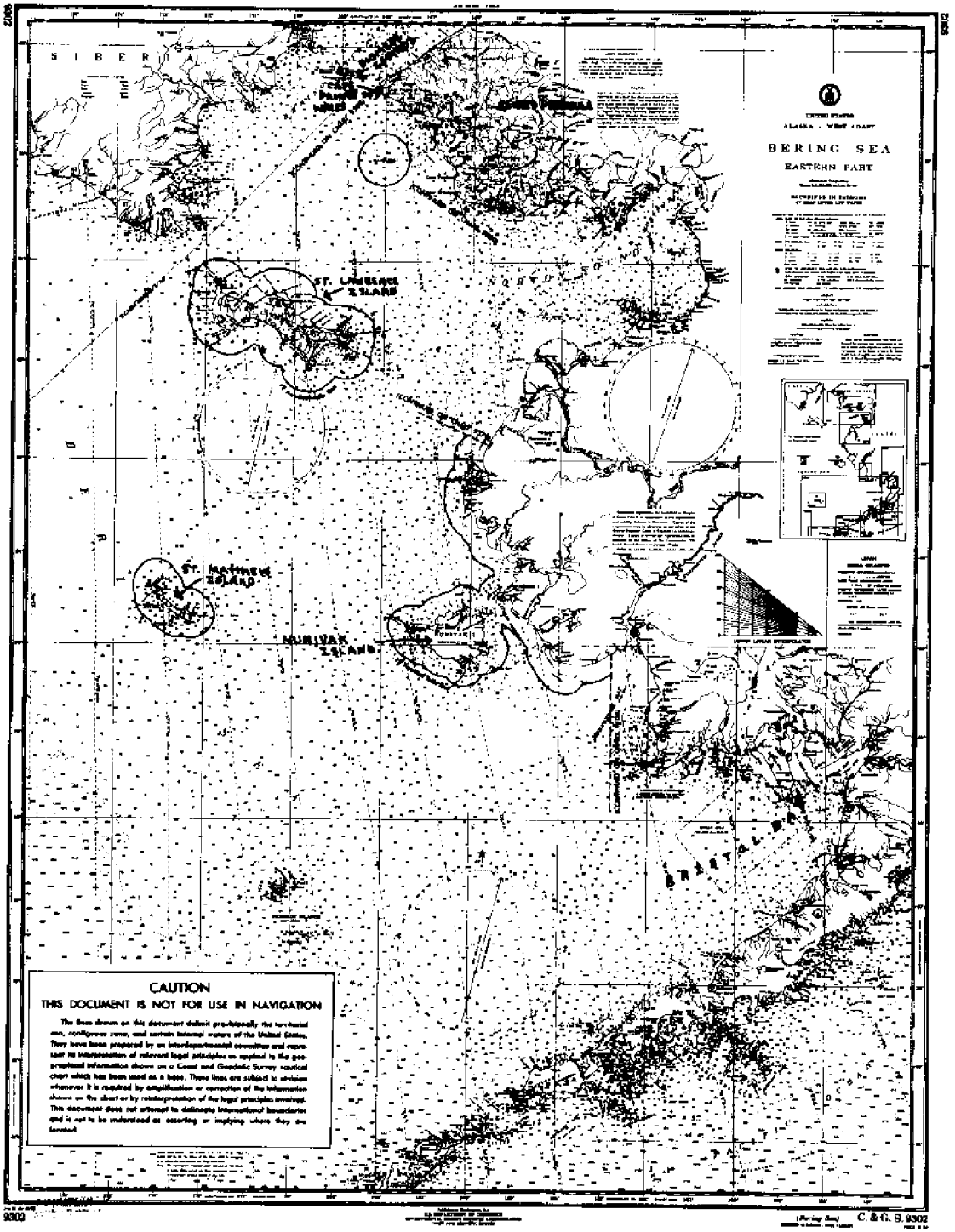

CHART 6.9. Western Region of Alaska (Bristol Bay to Seward Peninsula).

Source: U.S. Dept. of Commerce, Environmental Science Services Administration, Coast and Geodetic Survey (C.&G.S. Chart No. 9302).

e. Northern Alaska (See Chart 6.10).--This area runs from Cape Prince of Wales to Point Barrow. It has sections that are fringed with islands and barrier reefs, but in general the coastline is regular.[200]

In summary, the coast of Alaska as a whole resembles the coast of Norway. Because of corresponding geological occurrences, the glaciation in both areas has produced topographical and submarine similarities.

B. Economics

1. Vital Needs of Population Attested by Long Usage.--The natives of Alaska are divided into four major groups: the Aleuts, the Eskimoes, the Athabascans and the Tlingit Indians. Of the total population of Alaska of 272,000 (1966 Census), about 53,000 are Eskimoes or Aleuts and about 70,000 are associated with military activities in the State.[201] The natives all settled primarily next to the coast and derived their subsistence from fishing and sealing. Those living in the interior usually had their summer camps on the tributaries of large rivers and primarily subsided on their catches of salmon. These interior natives were composed mainly of the Athabascan stock.[202]

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[200] Ibid., p. 37.

[201] U. S. Dept. of the Interior, Bureau of Commercial Fisheries, Alaska, Newsletter (Juneau Alaska, Sept. 13, 1968), p. 3.

[202] Teal, Geography of the Northlands, p. 305.

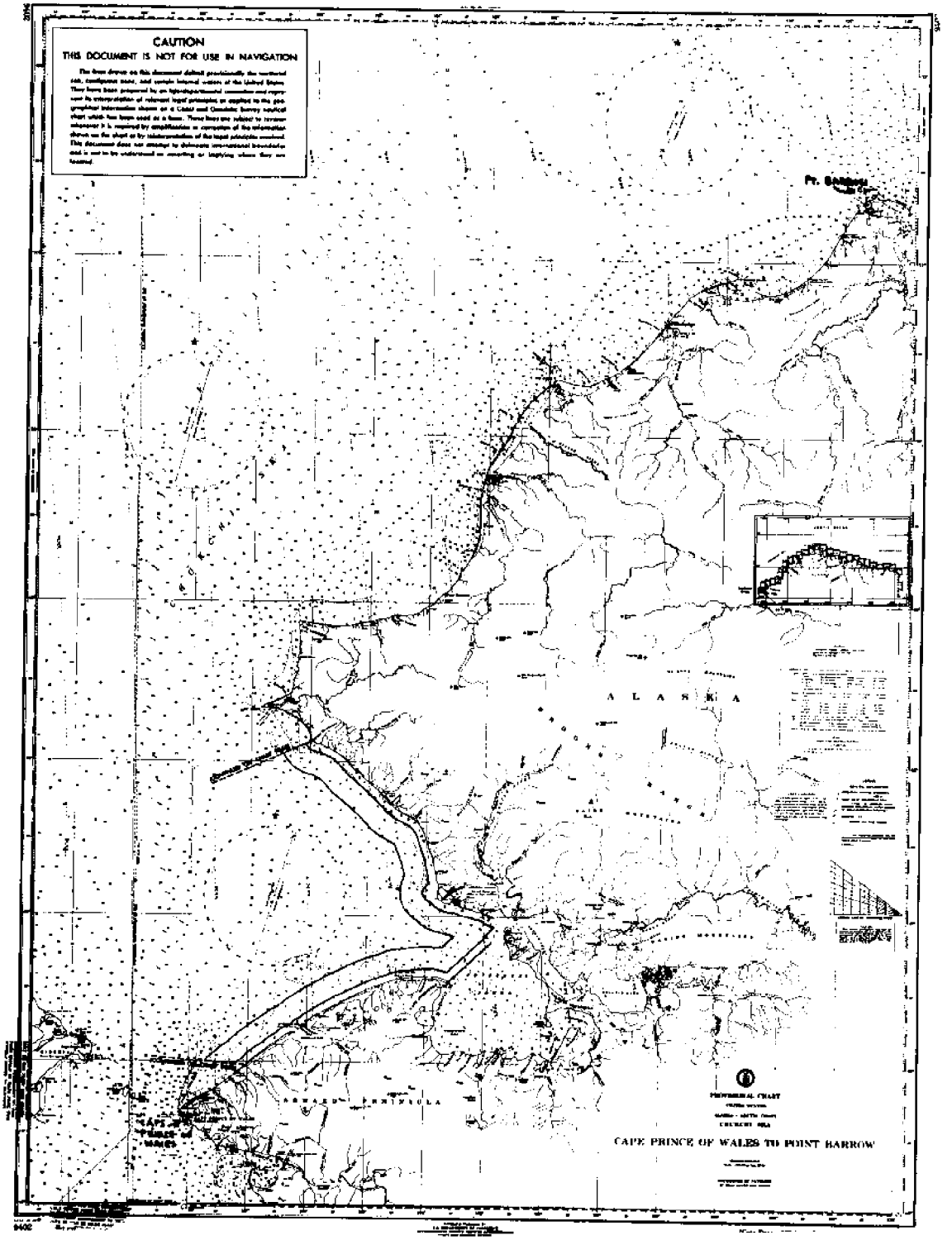

CHART 6.10. Northern Region of Alaska (Cape Prince of Wales to Barrow Point).

Source: U.S. Dept. of Commerce, Environmental Science Services Administration, Coast and Geodetic Survey (C.&G.S. Chart No. 9402).

It is well known that the native populations of Alaska depended on fishing as a major means of subsistence from time immemorial. Because their catches are not normally sold, catch amounts are not recorded.[203] However, it is estimated that hundreds of thousands of chum salmon are taken each year for personal use of the Alaskan natives along the large rivers of the Bering and Chuchin Seas north of Bristol Bay. These salmon are preserved for both human and dog consumption.[204] The pink salmon has been and still is caught by the thousands by the Indians and Eskimoes solely for subsistence purposes.[205] The Indians of the northwest coast of Alaska have also speared seals for food and clothing from time immemorial.[206]

While native subsistence fishing may be important in proving that a coastal state has a vital need to control and conserve fish populations, commercial fishing can also serve as proof of these vital needs. Commercial fishing provides both food and jobs for the survival of the population.

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[203] U. S. Dept. of the Interior, Fish and Wildlife Service, Bureau of Commercial Fisheries, Alaskan Fishery Resources, Chum Salmon, Fishery Leaflet 632 (Washington, D.C.: Government Printing Office, June 1970), p. 5.

[204] Ibid., p. 6.

[205] U. S. Dept. of the Interior, Fish and Wildlife Service, Bureau of Commercial Fisheries, Alaskan Fishery Resources, Pink Salmon, Fishery Leaflet 619 (Washington, D.C.: Government Printing Office, March 1969), p. 6;
R. D. Forester, The Sockeye Salmon (Fisheries Research Board of Canada, 1968), p. 43

[206] U. S. Dept. of the Interior, Fish and Wildlife Service, Bureau of Commercial Fisheries, The Fur Seal Industry of the Pribilof Islands, 1786-1965, Circular 275 (Washington, D.C.: Government Printing Office), p. 2.

2. Vital Needs Attested by Present and Potential Usage.--While the past vital needs of an area may be used as evidence to depict the population's dependence on fishing, a more logical attestation of these needs should be in line with the Portuguese position expressed at the 1930 Hague Conference:

> "If we respect age long and immemorial usage which is the outcome of needs experienced by states in long past times, why should we not respect the needs which modern life, with all its improvements and demands, impose upon states?"207

In view of this theory, the present needs as illustrated by modern statistics can also prove a nation's dependence on its coastal fisheries.

a. Fishing Industry as a Whole.--The fishing industry in Alaska began in 1863 with cod fishing and the total value of fishery production in that year was worth $2,340. In 1969, the total value of fishery production in Alaska was worth $137,672,838. Table 2 is a list of the total annual value for Alaskan fishery production from 1863 to 1970 at five-year intervals.

Fisheries supply about 41 percent of the total resource industry in Alaska[208] as shown in Table 3.

A regional catch summary and catch value to fishermen for the year 1968 is illustrated in Table 4.

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[207]League of Nations, Acts of Conference, p. 106.

[208]University of Alaska, Insititute of Social, Economic and Government Research, Alaska Review of Business and Economic Conditions, Vol. VI, No. 3 (August 1969), p. 6.

TABLE 2

TOTAL VALUE OF ALASKAN FISHERY PRODUCTS

1863 - 1970

1863	$ 2,340	1923	$38,678,825
1868	245,018	1928	54,553,376
1873	58,896	1933	32,126,588
1878	123,814	1938	42,869,726
1883	206,093	1943	66,516,357
1888	1,557,452	1948	116,948,814
1893	2,532,578	1953	69,671,238
1898	3,667,322	1958	83,742,941
1903	8,229,158	1963	109,037,800
1908	11,847,443	1968	191,686,488
1913	15,739,068	*1969	137,672,838
1918	59,144,859		

*Preliminary figures

Total Value (1863 - 1970) - $4,223,874,509

Species involved in fishery prior to 1904:

1863-1867	Codfish
1868-1877	Codfish & Salmon
1877-1889	Codfish, Salmon & Herring
1890-1897	Codfish, Salmon, Herring, Halibut, Fish Oil (other than Herring)
1898-1903	Codfish, Salmon, Herring, Halibut, Fish Oil, Clams

Source: The above list was forwarded with a personal letter from Sergei Astrahantseff, Statistical Liaison Officer, U. S. Dept. of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Juneau, Alaska, Feb. 4, 1971.

TABLE 3

TOTAL VALUE OF MAJOR ALASKAN RESOURCE PRODUCTION

1968

Industry	Value (thou. $)	Percent of Total
Fisheries	217,544	41.2%
Oil and Gas	187,900	35.6%
Minerals	30,700	5.8%
Forest Products	92,000	17.4%
Total	528,144	100.0%

Source: University of Alaska, Institute of Social, Economic and Government Research, Alaska Review of Business and Economic Conditions, Vol. VI, No. 3 (August 1969), p. 6.

TABLE 4

CATCH SUMMARY AND VALUE TO FISHERMEN

1968

REGION	SALMON Pounds	SALMON Value
Southeastern Alaska	134,982,258	$23,920,389
Central Alaska	111,827,457	17,680,149
Western Alaska	38,462,354	7,854,874
TOTAL	285,272,069	$49,455,412

REGION	OTHER FISH Pounds	OTHER FISH Value
Southeastern Alaska	8,534,786	$ 912,286
Central Alaska	12,669,612	1,546,430
Western Alaska	660,738	97,144
TOTAL	21,865,136	$ 2,555,860

REGION	SHELLFISH Pounds	SHELLFISH Value
Southeastern Alaska	9,337,288	$ 2,823,547
Central Alaska	90,755,846	14,492,283
Western Alaska	42,312,934	10,573,025
TOTAL	142,406,068	$27,888,855

REGION	TOTAL Pounds	TOTAL Value
Southeastern Alaska	152,854,332	$27,656,222
Central Alaska	215,252,915	39,178,863
Western Alaska	81,436,026	18,525,043
TOTAL	449,543,273	$85,360,128

Note: Southeastern Alaska extends from Dixon Entrance to Cape St. Elias. Central Alaska extends from Cape Suckline to Seal Cape. Western Alaska extends from Seal Cape and includes the Aleutian Islands and the Bering Sea north through Kotzebue Sound.

Source: State of Alaska, Dept. of Fish and Game, 1968 Alaska Catch and Production: Commercial Fisheries Statistics, Statistical Leaflet No. 17, p. 2.

Alaska has a vital need for the fishing industry off its coast, much the same as Norway pleaded for herself in the Fisheries Case. Also similar to the situation in Norway in 1951, it has not yet been proven that Alaska's coastal fishery stocks have been detrimentally affected by foreign exploitation of these stocks.[209] In order to put Alaska's fisheries in proper perspective, it is essential to have regard for both the present and the potential value of the fishing industry since the industry in these coastal waters is relatively undeveloped when considering the stocks that have not been exploited to a maximum sustainable yield.

The waters above the vast continental shelf off the coast of Alaska contain a large variety of commercial species in great proportions of quality and quantity.[210] The fishing industry of this State presently is a major source of income for the population of Alaska and has a potential to be a major source of food and income for the whole United States. (See Figures 6.11 and 6.12) Presently 347 million pounds valued (landed wholesale) at 71.1 million dollars are caught off the coast of Alaska.[211]

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[209]U. S. Dept. of Interior, Newsletter, Sept. 13, 1968, p. 3.

[210]Ibid.

[211]U. S. Dept. of the Interior, Bureau of Commercial Fisheries, Fisheries of the United States...1969, by Francis Riley, C.F.S. No. 5300 (Washington, D.C.: Government Printing Office, March 1970), pp. 11 & 13.

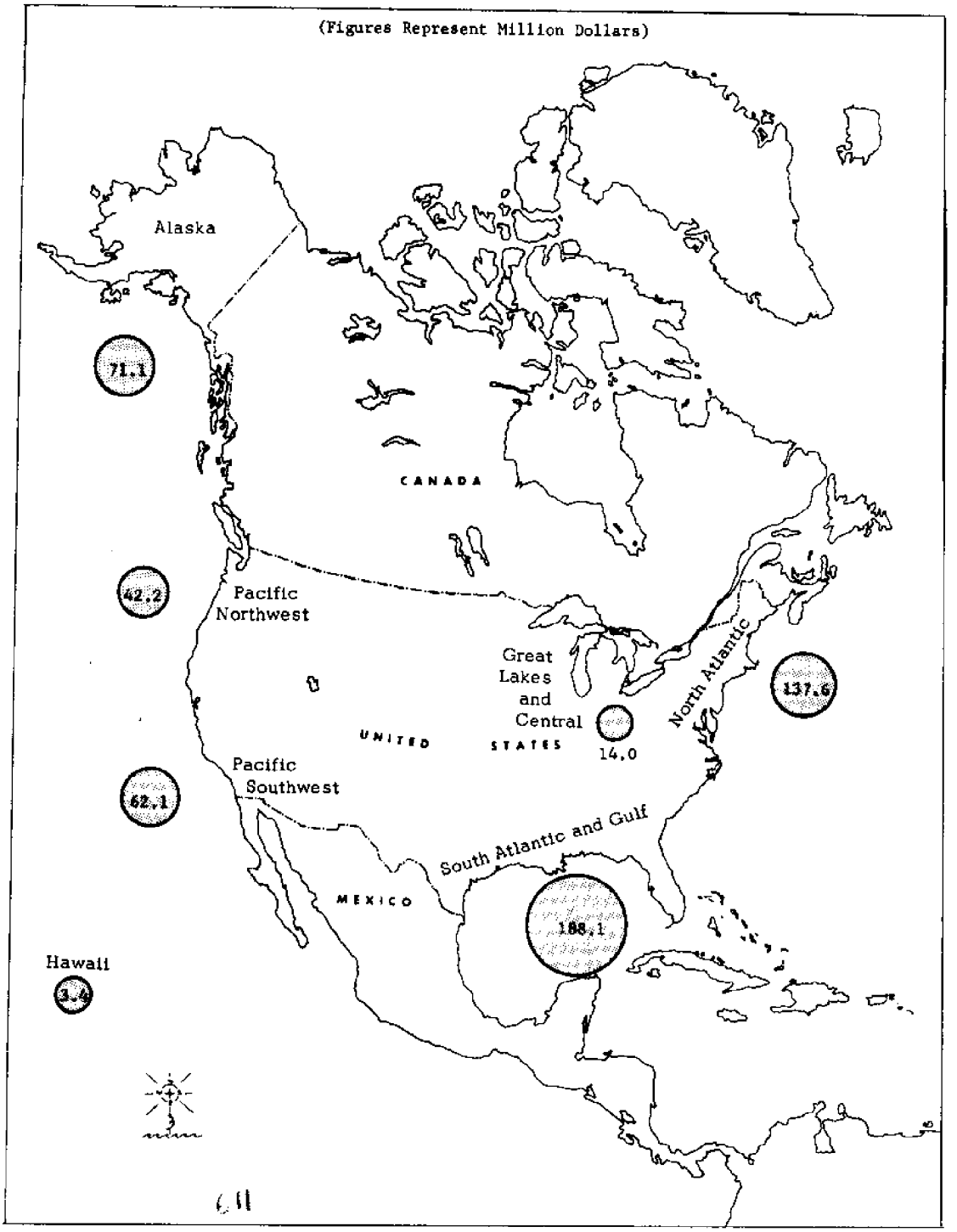

CHART 6.11. Value of American Catch by Regions, 1969.

Source: U.S. Dept. of the Interior, U.S. Fish and Wildlife Service, Bureau of Commercial Fisheries, Fisheries of the United States...1969, by Francis Riley, C.F.S. No. 5300 (Washington, D.C.: Government Printing Office, March 1970), p. 13.

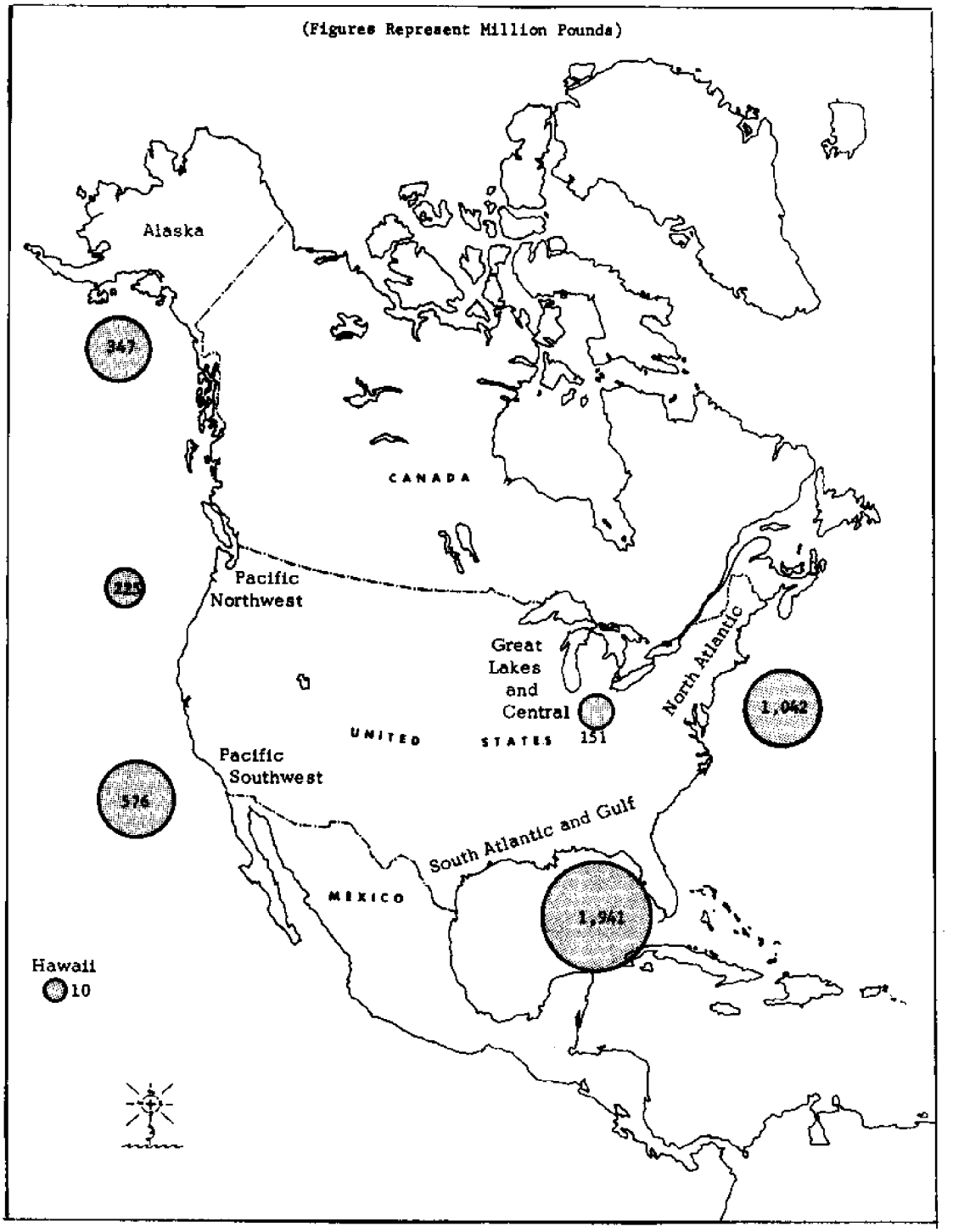

CHART 6.12. Volume of American Catch by Regions, 1969.

Source: U.S. Dept. of the Interior, U.S. Fish and Wildlife service, Bureau of Commercial Fisheries, Fisheries of the United States...1969, by Francis Riley, C.F.S. No. 5300 (Washington, D.C: Government Printing Office, March 1970), p. 11.

b. Major Species.--Excluding halibut almost every species can support an increased harvest if managed properly.[212] The fisheries of Alaska's coastal waters can best be managed by a single conservation program as has already been proven by the management of the fur seals off the Pribilof Islands.[213]

As illustrated in Figures 6.13A to 6.13K, most of the fishes off the coast of Alaska are distributed all along the coast with the exception of the sablefish. Most of the stocks begin their horizontal range near the shoreline. The above figures also show the maximum sustainable yield and a comparison of annual catch of the major species.

The following is a description of the value of certain major species of Alaska's coastal-water fish.

Halibut (See Figure 6.13A)

The total 1967 catch of halibut by Canadian and American fishermen was about 58 million pounds. The maximum sustainable yield is approximately 60 million pounds. The Japanese and Russians trawl fisheries are having an adverse effect on the stock, but figures depicting the extent of this impact have not yet been determined. American landings of this stock will probably not increase in the future.[214]

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[212]U. S. Dept. of Interior, Newsletter, Sept. 13, 1968, p. 4.

[213]U.S. Dept. of Interior, The Fur Seal Industry, p. 2.

[214]U. S. Dept. of Interior, Newsletter, Sept. 13, 1968, p. 4.

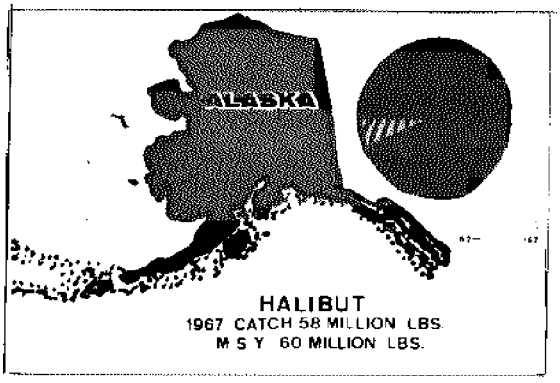

FIGURE 6.13A

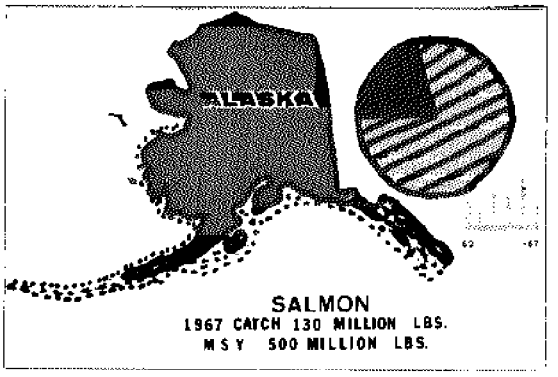

FIGURE 6.13B

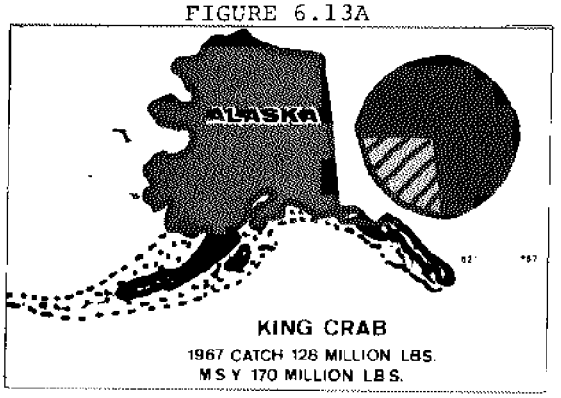

FIGURE 6.13C

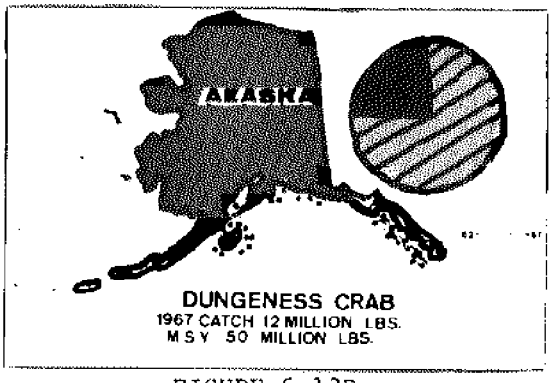

FIGURE 6.13D

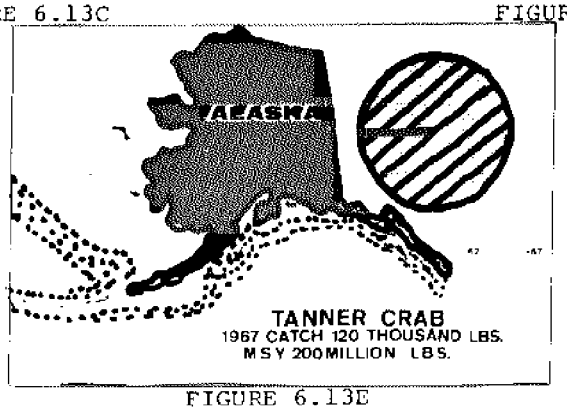

FIGURE 6.13E

FIGURES 6.13A to 6.13K. In the following figures the lined circle represents the maximum sustainable yield (MSY), and the dark indicates what portion of the resource was utilized in 1967. The distribution of each species is shown by dots throughout Alaska waters. The Bar graphs indicate the comparative size of annual catches.

Source: U.S. Dept. of the Interior, Fish and Wildlife Service, Bureau of Commercial Fisheries, Newsletter, (Juneau, Alaska, September 13, 1968).

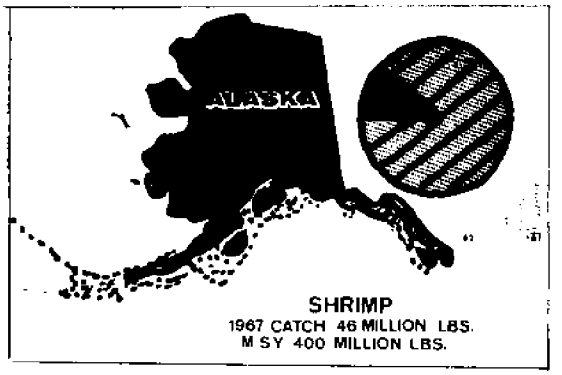

FIGURE 6.13F

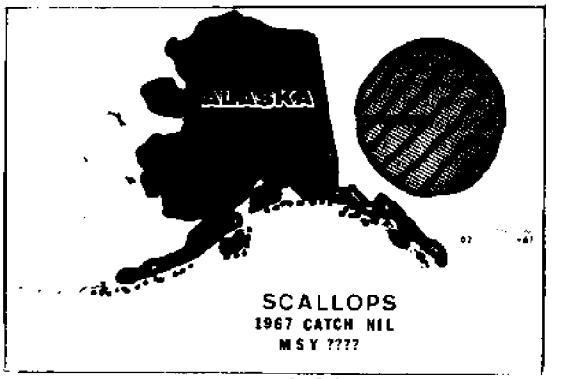

FIGURE 6.13G

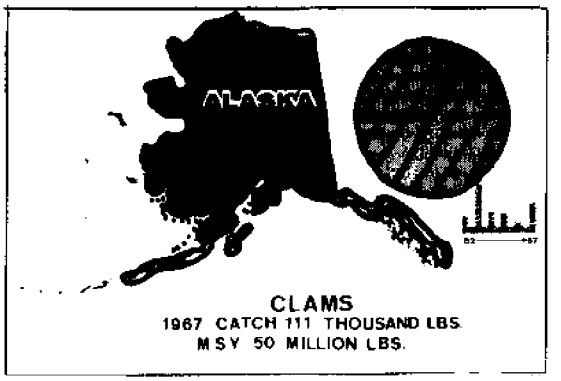

FIGURE 6.13H

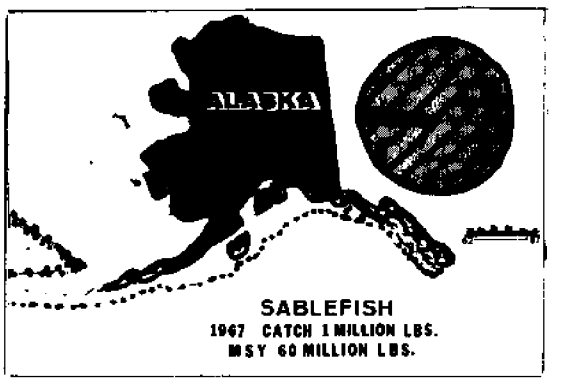

FIGURE 6.13I

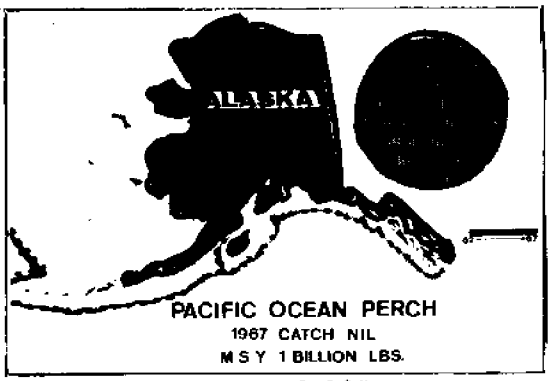

FIGURE 6.13J

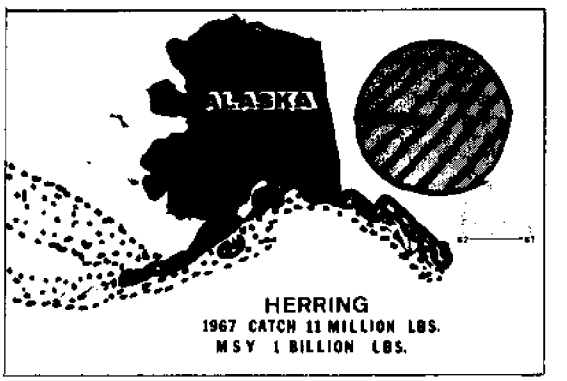

FIGURE 6.13K

Salmon (See Figure 6.13B)

In 1967, the salmon catch was only 130 million pounds whereas the maximum sustainable yield was 500 million pounds. If foreign fishermen can be restricted from the area, the salmon production should substantially increase in the near future through the new methods of conservation and management that have been developed in the past ten years.[215]

King Crab (See Figure 6.13C)

It is felt that the King Crab stock is already overfished. American fishermen have concentrated their efforts in the past in the Gulf of Alaska, but are now moving into the Bering Sea which has been exclusively fished by the Russians and Japanese. While exact information is lacking pertaining to the maximum sustainable yield, it is estimated that approximately 200 million pounds should be available for the United States.[216]

The existing problem of foreign vessels exploiting King Crabs should be virtually nonexistent in the future because in 1968 the United States declared that this stock was a "creature of our continental shelf and consequently considered its property."[217] Japan and Russia are allowed to continue fishing but under limited quotas which are being reduced because of the dwindling stocks.[218]

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[215] Ibid., p. 5.

[216] Ibid., p. 6.

[217] Clarence P. Idyll, "The Crab that Shakes Hands," National Geographic, Vol. 139 (February 1971), p. 271.

[218] Ibid.

Dungeness Crab (See Figure 6.13D)

The Dungeness Crab is distributed around the Gulf of Alaska, Kodiak Island and along the Alaska Peninsula. In 1967, the United States landed 12 million pounds, but the estimated maximum sustainable yield is approximately 50 million pounds.[219]

Tanner Crabs (See Figure 6.13E)

Tanner Crabs have an estimated potential of 200 million pounds but only 3,246,822 were landed in 1968 by the United States.[220] The Japanese and Russians are already heavily exploiting this stock in the Bering Sea.[221]

Shrimp (See Figure 6.13F)

The shrimp resource off the coast of Alaska is one of the State's leading fisheries. Domestic commercial fishing began fifty years ago. In 1968, 42 million pounds were caught.[222] The best grounds for this stock are around Kodiak Island and most of the United States production comes from this area.[223] The Japanese and Russians are also extensively involved in the shrimp fishery along the coast of Alaska. The Japanese began their exploitation of shrimp in 1961 and the Russians

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[219]U. S. Dept. of Interior, Newsletter, Sept. 13, 1968, p. 7.

[220]Alaska, Dept. of Fish and Game, 1968 Alaska Catch, p. 11.

[221]U. S. Dept. of Interior, Newsletter, Sept. 13, 1968, p. 7.

[222]U. S. Dept. of Interior, Bureau of Commercial Fisheries, Alaska Fisheries Resources, by Louis Barr, Fishery Leaflet 631 (Washington, D.C.: Government Printing Office, 1970), pp. 1 & 8.

[223]U. S. Dept. of Interior, Newsletter, Sept. 13, 1968, p. 7.

started their exploitation in 1963. The Japanese and Russians are actively fishing on Portlock Bank near Kodiak. The annual Russian catch has been as high as 21 million pounds and the annual Japanese catch has been close to 70 million pounds.[224]

Scallops (See Figure 6.13G)

Establishment of the scallop industry in Alaska is recent. It is already considered to be a million dollar industry. It will be easier to manage this stock properly since it is protected by our present fishery zone.[225]

Clams (See Figure 6.13H)

The clam resource is practically untouched, but it is estimated to produce 50 million pounds a year.[226]

Sablefish (See Figure 6.13I)

Sablefish, a cod-like fish, has not been exploited by Americans to any great extent. However, the fishery has a good potential. Sablefish are most abundant around the entire edge of the continental shelf.[227]

Pacific Ocean Perch (See Figure 6.13J)

Pacific Ocean Perch are also a good potential stock that are not presently being utilized by American fishermen. The majority of this stock is found along the edge of the con-

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[224]U. S. Dept. of Interior, Alaska Fisheries Resources, p. 11.

[225]U. S. Dept. of Interior, Newsletter, Sept. 13, 1968, p. 8.

[226]Ibid.

[227]Ibid.

tinental shelf and is highly concentrated in the area between Kodiak Island and the Alaska Peninsula. The Japanese and Russians are heavily fishing this area and have harvested up to one billion pounds annually.[228]

Herring (See Figure 6.13K)

Herring range all along the coast of Alaska but the best areas for this stock are around the Kenai Peninsula. This fishery dates back to the early days of the new territory. In the last 1800's, many salteries were built along the coast of Alaska. Because of a poor market the production declined in 1938 and gradually went out of existence by 1950. However, in 1964 the industry was revived to meet the demand of the Japanese market for salt-cured herring roe.[229] By 1968, 300,000 pounds of herring roe were processed in Alaskan plants.[230] Presently, the Japanese are catching several hundred million pounds in the Bering Sea.

Industrial Fishes

Industrial fishes include yellow fin sole, turbot, cod, Alaska pollock, herring and many other flat fishes. Except for herring, the American fishermen are not utilizing this

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[228] Ibid., p. 9.

[229] Herring roe is Alaska's fastest growing speciality food industry.

[230] U. S. Dept. of the Interior, Bureau of Commercial Fisheries, Fish and Wildlife Service, Commercial Fisheries Review, by Jerrold M. Olson, Reprint N 881 (Washington, D.C: Government Printing Office, July 1970), p. 45.

great potential but the Japanese and Russians took almost two billion pounds off the coast of Alaska in 1967.[231]

Fur Seals

The Bureau of Commercial Fisheries manages the fur seal stocks. About 60,000 seals are harvested each year. This industry supports the Aleuts that live on the islands.[232]

In summary, the competition of foreign fishing with our fishermen in this area is a reality. Each year 1,200 modern vessels are being sent by Canada, South Korea, Russia and Japan to exploit the waters off the coast of Alaska.[233] While there has been some success in the conservation of resources and the protection of American gear through international fisheries conventions, such as the Halibut Convention, the Fur Sea Arbitration, and the North Pacific Fisheries Convention, and the bilateral agreements between the United States, Japan and Russia, there is still much to be desired.[234] The present complications will be intensified if, as predicted, Red China, North Korea, and Taiwan start exploiting these areas.[235]

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[231]U. S. Dept. of Interior, Newsletter, Sept. 13, 1968, pp. 9-10.

[232]Ibid., p. 11.

[233]Ibid.

[234]Alaska State Legislature, Proposed Joint Resolution No. 3, p. 1;
Egan, letter to McKernan.

[235]U. S. Dept. of Interior, Newsletter, Sept. 13, 1968, p. 12.

C. Historics

1. General.--Historics, as mentioned in the disucssion on the Fisheries Case, weren't a dominating factor in allowing Norway to use the straight baseline method. Historics merely supported the fact that the straight baseline method wasn't contrary to international law and therefore Norway could apply it to her whole coast even if she hadn't previously done so. Also, as previously explained, Norway did not in fact have an historic claim to the particular lines since she actually relied on other lines until 1935 when the straight baseline system was utilized.

In the Fisheries Case, the Court only used historics to prove Norway's economic dependence on fishing, which in turn would allow particular baselines to deviate from the general direction of the coast. Even in this issue her historical claims were weak.[236]

Subsequent to the Fisheries Case, a similar claim for particular baselines was provided by paragraph 4 of Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone as stated below:

> "Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken in determining particular baselines, of economic interests peculiar to the region concerned, the reality and importance of which are clearly evidenced by a long usage."[237]

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[236] I.C.J., Reports, p. 142 (a weak 17th Century whaling rights claim).
Wilberforce, "Some Aspects of the Anglo-Norwegian Fisheries Case," p. 167.

[237] Whiteman, Digest of International Law, p. 142.

While Alaska's economic interests are clearly evidenced by long usage, it seems logical that the economic interests could also be supported by present statistics which show that a large number of individuals are engaged in fishing for a living and that a large portion of the population are presently using fish as their main source of subsistence.

As discussed below, the historics of Alaska do lend some support to her claims to help justify lines that deviate from the general direction of the coast.

Before 1867, Russia claimed certain waters off the coast of Alaska for fishing and hunting purposes. These claims were recognized by the United States and Great Britain and passed to the United States by the Treaty of Cession.[238]

The 1799 Ukase, a Russian proclaimation, conferred upon the Russian American Company a right to fish and hunt on the North American coast down to the 55th degree north latitude. While this wasn't initially a direct sovereign claim, it was confirmed as a sovereign claim in the Ukase of 1821. The United States conceded to Russia in the Treaty of 1824 the area as far south as 54° 40' north latitude.[239] The area was depicted in Article 4 of the Treaty as interior seas, gulfs,

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[238]15 Stat 539; hereafter referred to as Treaty of 1867; Stanley, Proposed Sea Boundary, p. 1.

[239]Stanley, Proposed Sea Boundary, p. 5: Convention between the United States and his Majesty the Emperor of all the Russians relative to navigation and fishing, etc., in the Pacific Ocean signed in Petersburg by Henry Middleton, U.S. representative and by Count D. Wessebrode, representing Russia; hereafter referred to as Treaty of 1824.

harbors, and creeks which took into consideration Cook Inlet, Prince William Sound, Bristol Bay and Shelikof Strait.[240] In 1867, the United States acquired all of the Russian domain that was proclaimed in the Treaty of 1824.[241] (See Chart 6.14)

2. Specific Claims.--The following is a regional description of historic claims.

a. Southeast Region.--The United States has exercised jurisdiction and control over the southeast area of Alaska from Cape Muzon to Cross Sound since 1867.[242]

b. South Central Region.--In south central Alaska, from Copper River Delta to Mitrofania Island, the historical claims of the Treaty of 1824 are strengthened by the fact that the Russians actually occupied and controlled the area for such a long time. Before 1800, there were at least eighteen Russian fur trading stations in this area. Other nations did not make any claims because it was internationally conceded that Russia dominated this area for fishing and hunting purposes. In 1822, the area was divided into trading districts. One of the districts was Kadaik (Kodiak) district which includes Cook Inlet, Shelikof Strait, Bristol Bay and Prince William Sound.

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[240] Ibid., pp. 5-9.

[241] Ibid., p. 11.

[242] H. H. Bancroft, History of Alaska (Antiquarian Press, Ltd., 1886, reprinted 1959), p. 540.

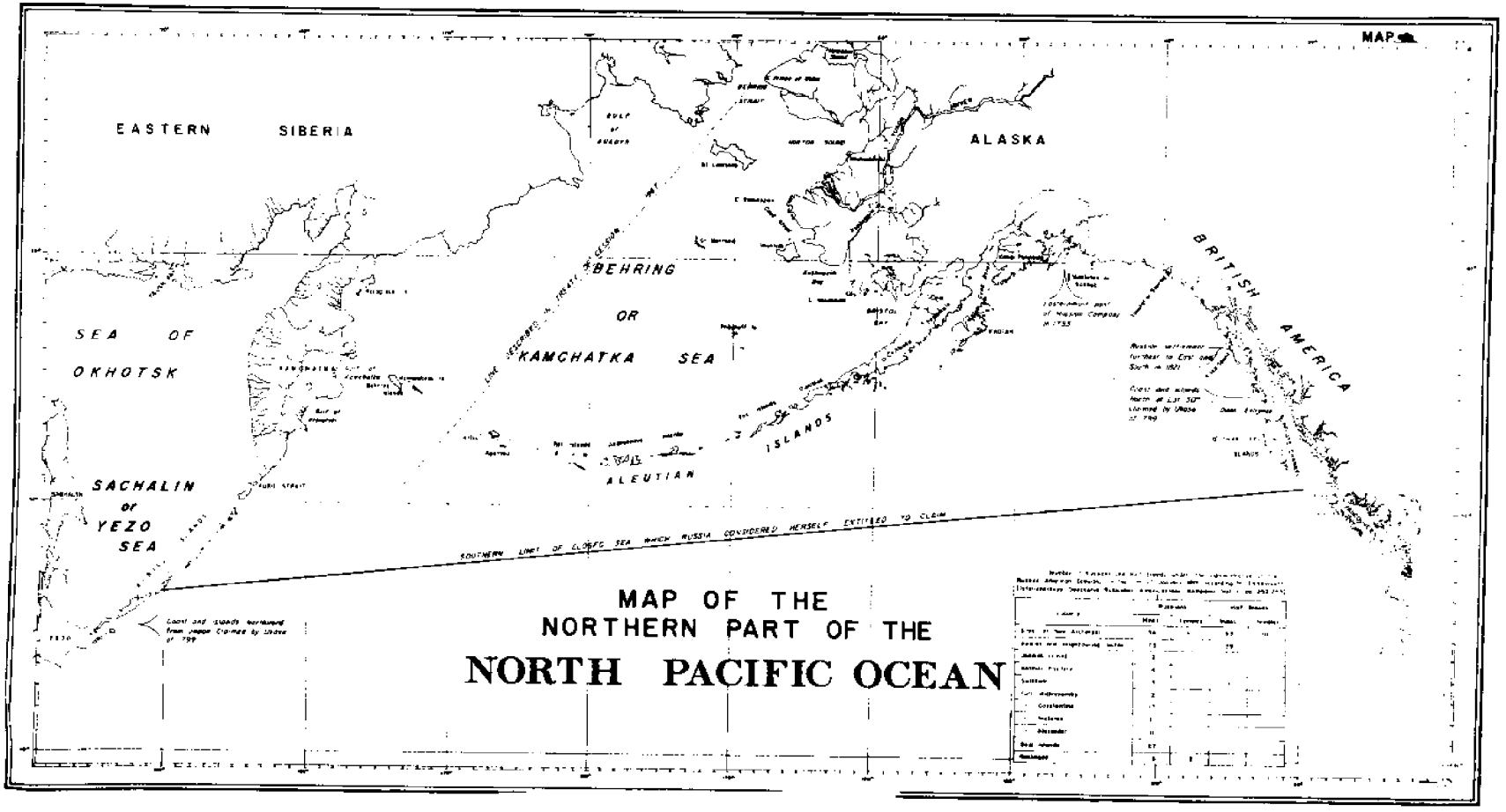

CHART 6.14. Area Russia considered herself entitled to claim in the North Pacific Ocean before the Treaty of Cession of 1867.

Source: Kirk W. Stanley, Proposed Sea Boundary for Alaska, (Printed courtesy of the National Bank of Alaska, 1970), back of appendix.

Thereafter, when the terms "interior seas and gulf" were used in the Treaty of 1824 to denote Russian hunting and fishing grounds, these bodies of water were also included. These waters were used and controlled by the Russians from 1700 to 1867.[243]

c. Aleutian Islands.--Russian interest in North America began in the Aleutian Islands. From 1760 to about 1852, the Russians used armed force to prevent encroachments of fishing and hunting grounds in the vicinity of these islands.[244]

d. Western Alaska.--This region covers Belchevin Bay to Cape Prince of Wales. The Russians established a trading station in this region in 1818. This area was also included in the Kodiak district of 1822. It encompassed Bristol Bay westward as far as Cape Newman.[245]

e. Northern Alaska.--The only specific claims to northern Alaska were in the Treaty of 1824 which pertained to the whole coast of Alaska including the North Sea. This area also came under United States jurisdiction in 1867.[246]

The United States also has a claim to some closing lines across Bristol Bay, around the Aleutian Islands, Shelikof

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[243]Stanley, Proposed Sea Boundary, p. 26.

[244]Ibid., p. 29.

[245]Ibid., p. 33.

[246]Treaty of Cession 1867, 15 Stat 539.

Strait and Prince William Sound as a result of the Bering Sea Tribunial in 1893.[247] This Tribunial made the United States adhere to one marine league for its sealing jurisdiction. However, there was no ruling on the status of interior seas, gulfs, harbors and creeks which were incorporated in the Russian claim in the Treaty of 1824 and which the United States had used for its authority for sealing jurisdiction.[248]

Justice Harlin arguing for the United States before the Bering Sea Tribunial related that in this contention the Government of the United States doesn't wish to withdraw or modify any claims it had against Russia over these waters. He also stated that the United States won't relinquish any authority that she conceded to Russia when Russia dominated Alaska.[249] After Russia's claim in the Ukase of 1821 leading up to the Treaty of 1824, the United States only contested Russia's claims to open seas and not to interior seas, gulfs, harbors and creeks. Since the United States never contested the area Russia considered interior seas, gulfs, harbors and creeks and since in the Treaty of 1867, the United States acquired these rights as they were known in the 1824 Treaty when Alaska was ceded to her in 1867,[250] a closing line should be allowed to be drawn across them to be used as a fishery baseline.

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[247]Stanley, Proposed Sea Boundary, pp. 1-11.

[248]Ibid., p. 10.

[249]Fur Seal Arbitration, Vol. 1, p. 54.

[250]Stanley, Proposed Sea Boundary, p. 10.

CHAPTER VII

CONCLUSION AND SEQUEL

The purpose of incorporating the straight baseline system has been for the establishment of coastal competence over an exclusive fishery zone for purposes of management and control of fishery resources off a nation's coast. If a nation presently seeks to utilize the straight baseline system for this purpose, it is reasonable to assume that this motive will be accepted internationally.

In order for a nation to qualify for use of the straight baseline system, its coast must meet the geographic criteria as set forth in Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone. For a specific foundation for incorporating this system and for drawing particular baselines, it is helpful to take cognizance of the Anglo-Norwegian Fisheries Case in which the straight baseline system was approved by the International Court of Justice. It is also advisable for a nation to have a solid economic claim for use of the system as a whole and in particular for drawing individual baselines that may deviate from the general direction of the coast. A nation should claim historics for the purpose of proving its economic dependence on these fishery resources for the purpose of drawing particular straight baselines. However, economic claims can also be supported by a coastal

nation's present dependence attested by modern statistics and new modes of management.

A major portion of Alaska's 34,000 miles of coastline[251] lends itself to the application of the straight baseline system since Alaska's geographic, economic and historic claims are comparable to those claims which qualified the Norwegian coastline for the straight baseline method. This system would be the maximum internationally accepted claim for straight baselines and would heavily support a claim for utilization of fishery baselines, which are only a portion of the straight baseline system; that is, fishery baselines are drawn for fishery purposes only and not competence over the territorial sea or inland waters.

Proposals for incorporation of the straight baseline system for Alaska's coast have been opposed by the Federal Government. As outlined in the Introduction to this report, the following inadequacies of the straight baseline system were pointed out:

1. The State Department felt that the adoption of the straight baseline method by the United States would encourage other nations to also increase their jurisdiction in areas which would otherwise be considered high seas and, as a result, interfer with our maritime and naval interests;

2. Areas of the continental shelf and its resultant natural resources would be relinquished by the Federal Government to the State of Alaska.

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[251]Approximately 38 percent of the total U.S. coastline.

If a fishery baseline system was incorporated, these problems would not exist for the following reasons:

1. Fishery baselines would be implemented only for sovereignty over fisheries and not for maritime and naval purposes. Therefore, if other nations likewise utilized fishery baselines, any adverse consequences affecting the Federal Government would be minimal. Also, approval by the Federal Government of the fishery baseline system would be no more of a countenance than the United States ratification of the 1958 Convention on the Territorial Sea and the Contiguous Zone on March 24, 1961,[252] which made the system of straight baselines internationally permissable. It should also be noted that the present minimal fishing claims of the United States have not discouraged other nations from enforcing their extensive fishing claims, such as Peru's 200-mile fishing zone.[253]

2. Control over fishery resources only are expanded by fishery baselines, and these newly acquired waters would be solely for fishing purposes and would not be considered inland or territorial.

Implementation of the fishery baseline system would enable the State of Alaska to control a more extensive fishery zone and as a result conserve its stocks and protect fishing gear

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[252]Friedmann, Lissitzyn, and Pugh, International Law, p. 532.

[253]Esther C. Wunnuke, "Legal Aspects of the Sea Boundaries of Alaska," paper presented to the 1971 Alaska Surveying and Mapping Convention, held in Anchorage, Alaska, February 1971, p. 93.

by excluxing foreign exploitation of the area. The system would be of significant benefit in areas of Shelikof Strait and Cook Inlet which are presently considered high seas.[254] Fishery baselines would enhance the fishing industry of Alaska in particular and the economy of the United States as a whole.

As mentioned in the Introduction to this report, it is necessary that authorization for utilization of the fishery baseline system be directed from the Federal Government. Implementation of the fishery baseline system by the Federal Government may be enacted by one of the following procedures:

1. By the President of the United States under his implied executive powers over foreign relations, as set forth in Article 2 of the United States Constitution;

2. By initiation of a bill in Congress which would pertain to the Federal and State relations and result in the execution of the order to an agency, such as the National Oceanic and Atmospheric Administration, as prescribed under Article 1 of the United States Constitution;

3. By a decision of the Supreme Court, similar to the case United States v. Louisiana[255] in which Louisiana decided to have her coastline extended by a 1895 Act of Congress which

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[254]Hartig, personal letter.

[255]394 US 11; 22 Lawyers Edition 2D 44; See also U.S. v. La., 394 US 1, 22 Lawyers Edition 36, in which the Supreme Court held that Texas must measure her coastal jurisdiction from the shoreline rather than from artificial jetties unless she relinquish her 9-mile jurisdictional rights in the Gulf of Mexico.

directed the drawing of lines dividing the high seas from the rivers, harbors and inland waters. In that case, the Supreme Court held that the coastline should be established in accordance with the Convention on the Territorial Sea and the Contiguous Zone.

Our commercial fishing industry has dropped to sixth place in world fisheries behind ever-expanding fishing nations such as Communist China and the Soviet Union.[256] Alaska has some of the most plentiful coastal fishing grounds in the United States. Exploitation of these areas is of great value at present and holds a good potential for the future. Proper utilization of these fishery resources may be a key factor in maintaining the position of the United States as a high ranking fishing nation.

It seems logical that the United States, which is a major fishing nation and fish-consuming nation, would support its fishing industry by the utilization of an internationally acceptable exclusive fishing zone delimited by the fishery baseline system in Alaska where exploitable stocks are abundant along its coast.

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[256]Alaska State Legislature, Proposed Joint Resolution No. 3, p. 1.

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